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 REPLY BRIEF OF PLAINTIFF-APPELLANT / CROSS-APPELLEE

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SUMMARY OF THE ARGUMENT

The Brief submitted by Defendant/Cross-Appellant Hope Law Firm (HLF) and Defendants-Appellees Andrew L. Hope, Travis J. Burk and Hope Law Firm & Associates, P.C. (HLFA) (together "Defendants") attempts to justify Defendants' latest story, weaving new facts and little law with inaccurate, nonspecific, and non-existent citations to the record. Nearly every factual assertion is contradicted by a prior sworn Declaration of Hope, and the legal assertions are contrary to black-letter contract law.

Usually the facts presented by one litigating party must be evaluated against those offered by the opposing party. In this remarkable instance, the greatest contrasts in facts appear when comparing one version offered in one sworn document by Hope to his subsequent testimony in the same case. The uncontroverted evidence, however, points to only one reality: that Hope, having never met the client (Mrs. Anderson) in *Swanny*, never attended a deposition or hearing, never attended trial, and never spent one minute on her case for more than five months up to trial, and very little before, secretly orchestrated a scheme to reclaim her case from Larew after it became worth $1,134,500.

These objectively true facts are central to the legal question of the appropriate equitable relief of *quantum meruit* (*QM*). They are essential in

calculating the reasonable value of services owed between attorneys who worked together in defined capacities, then split apart, one proceeding successfully to try a case the other had abandoned, only to have that case, and the associated attorneys' fees, snatched back. While Larew was successful at trial, below, and seeks to affirm many of the district court's factual findings, he also seeks a brighter line in *QM* jurisprudence to protect the interests of clients who are in the midst of litigation when a grab-back occurs, and also the professional and economic interests of attorneys who take on difficult cases for those clients.

Defendants' repetitious claim that somehow a terminated contract (the Iowa OCA) was revived and accepted by Larew is not supported by any evidence. Erroneously applied by the district court, the express fee split provision of the Hope-terminated OCA cannot govern *QM* calculations. The lodestar should be primarily considered, along with the nature of the work conducted, the relief obtained, and the manner of Larew's termination from *Swanny*, among others, as outlined in Larew's opening Brief.

Larew is entitled to *QM* from Defendants (including HLFA as a mere continuation of HLF) for Larew's services, and the facts here demonstrate that the equitable calculation of those fees should not be limited by what HLF received, should not be determined by the terminated OCA, and should not be reduced by any claimed "expenses."

ARGUMENT

I. HLFA IS A MERE CONTINUATION OF HLF AND IS THEREFORE LIABLE TO THE SAME EXTENT

"The key element of a 'continuation' is a common identity of the officers, directors, and stockholders in the selling and purchasing corporations." *Pancratz v. Monsanto Co.*, 547 N.W.2d 198, 201 (Iowa 1996). There is no dispute that Andrew L. Hope is the sole owner of HLF and the sole owner of HLFA. (Defendants' Brief, p.11). The key element is therefore met, as there is a common identity of directors/shareholders in HLF and HLFA: Hope. Hope claims he transitioned his law practice from a PLC to a PC for tax purposes. (Defendants' Brief, p.11). The fact that a shell of HLF "continued" to exist thereafter does not change the analysis. There were no "separate and distinct" operations by HLF once its employees were gone. *Cf. Pancratz*, 547 N.W.2d at 202. Contrary to Defendants' assertion, the "fact that employees went to HLFA and began to be paid from that law firm, and bills were and are paid by HLFA" (Defendants' Brief, p.35), does indeed show that HLFA is a mere continuation of HLF. HLF existed in name only. Its operating bank account, which Hope testified contained the 40% fee he claimed he owed Larew, then "dwindled" (Defendants' Brief, p.30) to almost nothing (App1. 302-06). That is not an active law firm conducting business.

Further, contrary to Defendants' assertions (Defendants' Brief, p.31), HLFA has already paid for some of HLF's liability, as HLFA paid the Motion to Compel sanction in this case, despite the continued "existence" of HLF. (App1. 164-66). HLF does not continue to operate: it has no employees, no staff, no payroll, and therefore, no work. HLFA's bookkeeper testified that HLF "turned into" HLFA. (Stewart Dep., p.10, ll.11-18). Moreover, Defendants admitted that HLFA is a "mere continuation" of HLF in their Amended Answer. (App1. 1140, ¶5; 1166 ¶5).

HLFA is the mere continuation of HLF in a new corporate form. As such, HLFA is liable for any judgment entered against HLF. *See Arthur Elevator Co. v. Grove*, 236 N.W.2d 383, 392 (Iowa 1975) (affirming finding of mere successor and citing case describing partnership incorporating as to "put on another coat").

II. THE DISTRICT COURT PROPERLY HELD AN IMPLIED-IN-FACT AGREEMENT BECAUSE THERE WAS NO AGREEMENT ON FEES AND DEFENDANTS KNEW LAREW CONTINUED TO WORK ON *SWANNY*

The district court twice held that there was an implied-in-fact agreement between Larew and Hope for payment of fees and expenses for work on *Swanny*. (App1. 28, 174-76). Defendants' arguments center on the groundless assertion that a *single term* (the fee split) of a previously-terminated agreement (App1. 336-38) can be reincarnated *sub silentio* by one party because a new agreement as to that term was not obtained.

With respect to the terminated OCA, Defendants repeatedly make baseless assertions, such as:

> Yet, the parties did continue to operate under the oral understanding that the June 2011 OCA continued to apply to the existing cases, at least until they would be able to agree to different terms for representation and fee division in an ongoing relationship. (Tr. Vol. IX, p.97).

(Defendants' Brief, p.15). There was no such "oral understanding." Defendants cite neither exhibit, nor Larew testimony, nor any other evidence evincing Larew's agreement or "understanding" that the Hope-terminated Iowa OCA would somehow continue in effect. Terminated contracts do not revive if there is no new agreement. *Recker v. Gustafson*, 279 N.W.2d 744, 75 (Iowa 1979) ("Where a contract is rescinded the contractual obligations of the parties are discharged[.]"). One cannot terminate a contract and then intend to keep *some of it*, unilaterally, in one's mind.

Indeed, Hope has not even been consistent in his own "understanding"—oral or otherwise—in this litigation. He has varyingly/contradictorily claimed: "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); *see also* Defendants' Amended Answer, p.16, ¶4: "Larew was essentially serving as *Pro Bono* Counsel" (App1. 1180).

Similarly, a "state of non-agreement" does not revive a terminated contract until a new agreement was reached. *Cf.* Defendants' Brief, p.17. That is anathema to contract law, requiring an offer and acceptance to have an agreement. *Margeson v. Artis*, 776 N.W.2d 652, 655 (Iowa 2009). Moreover, there was no consideration for Larew to accept all the risk of time and expense of *Swanny* for the same compensation as had existed in the terminated contract. *Id.* at 656-57 (describing the requirement that new consideration exist to support contract modifications).

The last word on their "understanding" from Larew with respect to his compensation for litigating *Swanny* was that "court supervision" would likely be required, *not* that he agreed he was operating under a terminated (and breached) OCA. (App2. 150). It is absurd for Hope to contend that Larew would write this email description of the situation if Larew had agreed that the OCA would control their *Swanny* fee split. In fact, even the first sentence of Hope's 2013 email states: "Swanny—Now that you claim we didn't reach an agreement on this case, we need to agree on a percentage split on this case if you intend to move forward with representation." (App2. 151). There was, therefore, clearly no agreement or understanding, even on Hope's part.

Defendants admit, as they must, that "…it appears the parties overall were of the thought and concept that Larew would continue working on [*Swanny*]." (Defendants' Brief, p.16). It was more than a "thought and

concept." Defendants knew that Larew was still working on *Swanny*, as demonstrated by their subsequent emails (App2. 138-47, 148-68, 623-26); by testimony (Burk T. vol.VII, p.102, l.24—p.103, l.4); by Hope's post-verdict congratulatory email (App2. 169-70); and by Hope's failing to do anything with respect to *Swanny* from the moment he terminated the OCAs through the *Swanny* jury's verdict. (App2. 888). These are exactly the circumstances that give rise to the implied-in-fact contract governing the fees in *Swanny* as between Larew and Defendants. (App1. 174-76).

Indeed, only the final point—that Hope knew that Larew was continuing to work on and incur expenses on *Swanny*, alone, for months, and stood by silently (App2. 888)—needed to have been proven by Larew to prevail on the implied-in-fact agreement for reasonable fees and costs. *See Roger's Backhoe Serv. v. Nichols*, 681 N.W.2d 647, 651-52 (Iowa 2004) (affirming implied-in-fact contract to pay for excavation where the owner watched the uncontracted for work occur for three days and then denied payment because there was no contract). Hope knew that there was no fee agreement with Larew applicable to this case. *See* Defendants' Brief, p.9: "The parties attempted, but could not reach, agreement as to division of all cases and all money payments to be made to Larew for work in those cases where the fee agreement with HLF remained in place, including the *Swanny* case[;]" *see also* p.15. Like the owner in *Roger's Backhoe*, Hope knew that *Swanny* needed to be litigated, including trial, and

knew that Larew was undertaking that work. 681 N.W.2d at 651. Hope was "bound to call off the [litigating] if he did not intend to pay for it." *Id.* Instead, Hope threatened to get new trial counsel (App2. 151), but did not. Hope had an opportunity to act on his new-lawyer-threat and to speak to Mrs. Anderson in May of 2013. But, he did not. Instead, Larew's continuing on *Swanny* after informing Hope that legal fees would be subject to "court supervision" (App2. 150) was "accepted by [Hope's] silence." *Roger's Backhoe*, 681 N.W.2d at 652.

If one were to import the facts of the instant case onto *Roger's*, it would have been the equivalent of the owner watching the trench be built over five months, and then cutting it up and selling that trench to other landowners for a profit, but still refusing to pay for it. That is what Hope did: he accepted Larew's work on the case until trial was successful, then brought on new attorneys, S&B, paying them hourly and awarding them a retroactive contingency fee on the verdict Larew had obtained. The breach of the implied-in-fact contract is therefore not just in Hope's failing to pay Larew, as Hope has done for more than five years, but in Hope's accepting all of Larew's work openly, and then secretly grabbing back the case and giving away fees to other lawyers. Therein lies the breach, as well as the conversion, as outlined in Larew's opening Brief.

Finally, even if the Iowa OCA had not been expressly terminated by Hope, his breach[1] of the same would have negated its application to his relationship with Larew. *See Kelly v. Iowa Mut. Ins. Co.*, 620 N.W.2d 637, 641 (Iowa 2000) ("It is a basic principle of contract law that once one party to a contract breaches the agreement, the other party is no longer obligated to continue performing his or her own contractual obligations."); Restatement (Second) of Contracts §§ 235 & cmt. b, 237 (1981). When a party breaches a material term of a written contract, that party cannot later invoke the benefits or protections of that agreement. *Id.* Even more clearly, where a contract is terminated by a party, that party cannot invoke it to avoid paying owed *QM*. Implausibly, Defendants are asking the Court to apply *only one term* of the terminated OCA contract—the fee split provision Hope relies upon—and to ignore the other material terms of value to Larew.

III. *QUANTUM MERUIT* APPLIES TO DETERMINE LAREW'S FEES BASED ON THE IMPLIED-IN-FACT CONTRACT

Given that the contract became implied-in-fact after the parties had failed to agree on a fee division, Larew is entitled to *QM*. *Kelly, Shuttleworth & McManus v. Cent. Nat'l Bank & Tr. Co.*, 248 N.W. 9, 14-15 (Iowa 1934). *QM* is

[1] Hope's breaches of the OCA were many and varied, but included failing to provide support to Larew as of March 2013, and no longer reimbursing expenses incurred by him on behalf of clients. (Hope T. vol.VIII, p.42, l.10—p.43, l.9; Larew T. vol.I, p.105, l.1–p.107, l.12).

an equitable concept and, as such, a *de novo* review and award by this Court is appropriate. *Watson*, *P.C. v. Peterson*, 650 N.W.2d 562 (Iowa 2002); *see also* T. Vol.I, p.7, l.15—p.9, l.11 (The Court: "going to treat this like we would like an equity case"), *and State v. Krause*, 925 N.W.2d 30, 32-33 (Minn. 2019) ("The proper method to calculate an award of attorney fees is a question of law that we review *de novo*.").

The majority of Defendants' arguments with respect to *QM*, and their Brief, generally, center on the conflation of two separate relationships, governed by separate contracts: the relationship between Hope and Larew, on the one hand; and the relationship between Hope, Larew, and Mrs. Anderson, the client, on the other. The first relationship became an implied-in-fact agreement to render services to HLF clients once the OCAs were terminated by Hope in May of 2013. The second relationship was governed by the Swanny Contract until it was amended through an Addendum that attempted, among other things, to discharge Larew. The difference is crucial. The express contract with Mrs. Anderson—the Swanny Contract—cannot now protect Defendants from their breach of the implied-in-fact contract for services and fees with Larew.

The Swanny Contract/Addendum, since it continued in effect through the end of the case, established what Mrs. Anderson was to pay the attorneys

for their work. That is not the same question as the equitable value of fees to be paid by Defendants to Larew. Larew and Defendants were operating under an implied-in-fact contract, and *QM* is not capped or established by a separate, contractual limit/amount. That would be a contradiction in terms: applying an express contractual provision from a separate contract to an implied-in-fact contract between different parties. *See Sitzler v. Peck*, 162 N.W.2d 449, 451 (Iowa 1968) ("[T]here cannot be an express contract and an implied one relating to the same subject matter[.]")

A. No Contractual Limit From a Separate Contract is Imposed on the Implied-In-Fact *QM* Calculation

The facts of this case demonstrate why imposing a limit based on what HLF received (under the revised Swanny Contract/Addendum) would be particularly inequitable. Hope first gave away fees earned by Larew in providing S&B a contingent fee in the verdict already obtained *and* an hourly payment. In addition, thereafter, Hope misunderstood the Addendum, requiring HLF to take an even lower fee under the Swanny Contract/Addendum. (App1. 172, 419-20; App2. 211-13, 652-66). Larew's *QM* cannot be bound by Hope's misunderstanding of a contract he signed, or his conversion of the *Swanny* fees. Larew was excluded from all negotiations regarding the Addendum (and even notice of them). If Hope had given away 90% of HLF's fees to S&B, equity

would not tolerate Larew being limited to the reduced amount retained by HLF. That is the logical extension of Defendants' argument, however.

Moreover, Defendants assert that the hourly fees paid to S&B and fees paid to attorney George Warner (who appeared in the Minnesota lien proceedings on behalf of Hope and HLF, not Mrs. Anderson: App1. 599-600) should somehow further reduce the fees available to Larew. (Defendants' Brief, p.40). At a minimum, Mrs. Anderson signed off on $388,421.02 to "Hope Law and Larew Law" (App2. 211-13), though that does not limit Larew's claim against Defendants. The fee finally paid to HLF should not cap the *QM* fee owed by Hope to Larew under the implied-in-fact contract because Larew is entitled to the reasonable value of services, and for attorneys, the lodestar method is the starting point for fee valuation. *See, e.g., Watson*, 650 N.W.2d at 567 (holding that attorneys are entitled to be paid reasonable value of their services under *QM*, "but not on the basis of the contract amount[]"); *Faricy Law Firm, P.A. v. API, Inc. Asbestos Settlement Tr.*, 912 N.W.2d 652, 659 (Minn. 2018). Then, other factors, particularly relevant here, should be considered and applied to any adjustment. *Id.* It was error for the district court to apply the terms of the Swanny Contract to the separate implied-in-fact contract between Larew and Hope. (App1. 177).

Specifically, one key determination Larew asserts should be considered under Iowa *QM* analysis involving fee divisions between counsel is the timing of an attorney's termination. *See, e.g., Faricy Law Firm*, 912 N.W.2d at 658 (setting forth eight factors to consider for adjustment of *QM* calculation for discharged contingent-fee attorney). In addition to its timing, here, the manner and method of Hope's termination of Larew from the Swanny Contract—not the separate OCA, which had earlier been terminated by Hope—should be considered. This is similar to a consideration used in West Virginia when reviewing fees between attorneys, which includes the "reason the client changed firms[.]" *Kopelman & Assocs., L.C. v. Collins*, 473 S.E.2d 910, 920-21 (W. Va. 1996). The reason for Mrs. Anderson leaving and her termination of Larew is that she was at first not informed that Larew was no longer affiliated with HLF when signing the Addendum, and then was threatened with having to pay the full amount of fees on the HLF contract if she did not discharge Larew. (C. Anderson Dep., p.41, l.21—p.42, l.25; Wilson Dep., p.161, ll.12-23).

Contrary to Defendants' revisionist assertions, there can be no doubt that Hope intended to terminate Larew from *Swanny* and attempted to end Larew's attorney-client relationship with Mrs. Anderson on October 31, 2013. The Addendum clearly states "only" the three firms listed would represent Mrs. Anderson going forward, which did not include Larew; there was no other

reason for such express language. (App1. 419-20). The email from Hope to Larew the next morning was also unequivocal: "…Catherine Anderson's interests will be best served by having experienced and successful Minnesota Counsel handle this matter from this point forward. Adina and Brenda have agreed to associate with Hope Law Firm and Wilson Law and handle *all* matters going forward." (App1. 439) (*emphasis added*). Additionally, the Substitution of Attorney form delivered by S&B that same day provides Larew will "withdraw from further representation of Plaintiffs . . ." (App1. 442-44). Hope had already decided to hire S&B to take over for Larew before traveling to Minnesota to meet with the client, having written a $5,000 check to them. (App1. 418). One does not need new lead counsel—requiring immediate out-of-pocket fees—unless one is orchestrating the firing of the current one. *See* Hill T. cited in Larew's original Brief, p.22, and Hope's Declaration, App2. 26, ¶16, 28, ¶22. When faced with the realization that it was up to the client to decide whom her attorney would be, Hope orchestrated Larew's termination by Mrs. Anderson a few days later. *See* App1. 450-62, 463-73, 474-82.

Defendants attempt to distract from these facts by referencing statements of the Minnesota District Court in the lien proceedings, apparently seeking, without authority, some preclusive effect. The only relevant finding by the Minnesota Court was that Larew did not have an express or implied

agreement with Mrs. Anderson (as distinct from the attorney-client relationship he had in providing her representation) and, therefore, he was not entitled to a lien in the *Swanny* case. (App1. 655-63, 664-676). That was the only finding necessary to the holding, and nothing else was fully and fairly litigated. *See Emplrs Mut. Cas. Co. v. Van Haaften*, 815 N.W.2d 17, 22-23 (Iowa 2012) (setting forth requirements of issue preclusion, including determination was essential). Defendants' repeated reference to *dicta* in the Minnesota District Court's opinions is unavailing, and also inaccurate. (Defendants' Brief, pp. 27-28, 49, 52). The Minnesota Court did not find that the Iowa OCA definitively governed the dispute between the parties. The Minnesota Court noted that Larew could file his own declaratory judgment action in Iowa regarding the application and effect of the OCAs, finding their applicability need not be determined to decide the lien question. (App1. 661, ¶10). The Iowa District Court has now ruled that the terminated OCA does not apply, and an implied-in-fact contract between Hope and Larew does. (App1. 176). Whatever error in the Ruling granting Partial Summary Judgment and the Ruling of 2/10/20 Defendants seek to assert, it cannot be based upon misstated *dicta* from Minnesota.[2]

[2] Defendants' efforts to confuse and conflate contracts is found in their claiming that Larew "asserted …under oath" in Minnesota that "[he] and HLF had orally agreed to, and did continue to, operate under the terms and

Defendants also attempt to reduce Larew's *QM* fees—again conflating relationships and contracts—by referencing Larew's failure to get his own contract with Mrs. Anderson, as if that negated Larew's implied contract with Defendants:

> Yet Larew insists that he is entitled to assert an implied contract and a right to quantum meruit without having complied with a basic and fundamental obligation of *an attorney to have a new and direct attorney fee contract with the client*. . . .

(Defendants' Brief, pp.37-38) (*emphasis added*). The implied contract is with Defendants, separate from the contract with the client. That is what was litigated in Minnesota. Larew accepted that he was operating under the Swanny Contract with Mrs. Anderson (only as it existed before the Addendum); indeed, Larew arguably was substituted in Hope's stead pursuant to paragraph 1, though that requires client consent. (App1. 348). Larew testified as to his reasons for not approaching Mrs. Anderson about a separate fee agreement, including the threat from Hope to sue them both. (App2. 158; Larew T. vol. I,

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conditions of the June 2011 OCA with the exception that they were co-counsel." (Defendants' Brief, p.14). This is an intentional obfuscation. In the paragraph cited, number 12, Larew describes continuing to work with Hope in a co-counsel capacity under existing arrangements after December of 2012, but he is describing the overarching agreements with clients. (App1. 902, ¶12-15). Moreover, Larew makes clear in the subsequent paragraphs, as he always has, that the parties "agreed upon a division of the clients' cases," and *Swanny* was to remain his. (App1. 902-03, ¶¶17-18; App2. 155; Larew T. vol.II, p.25, l.1—p.27, l.13).

p.125, l.19—p.127, l.19 & p.164, l.6—p.165, l.16). Whatever his reasoning back then does not change the calculus now: Larew had an implied-in-fact contract with Defendants to be paid for the reasonable value of services provided. Defendants' attempts to hide behind Mrs. Anderson and the Swanny Contract are not persuasive, as she has disclaimed any interest in this case or any amounts to be paid to Larew. (C. Anderson Dep., p.48, ll. 12-15). Larew continued to operate under the Swanny Contract with respect to his relationship with Mrs. Anderson, but not with respect to Defendants.[3] As described, Hope terminated the OCA agreements between Larew and Hope in all cases, and no new agreement was reached on fee splits, though Hope's last word in regard to the *Swanny* litigation was that HLF should receive 5%, and Larew 95%. (App2. 165).

Under the facts of this case, the separate Swanny Contract/Addendum cannot limit *QM*. The Swanny Contract could be considered in Larew's original expectation of fees, but not once it was amended without his consent. The timing and manner of Larew's termination, as described more fully below, as well as the contingent nature when he worked on the case, as opposed to when

[3] Hope's emails are also clearly describing the Swanny Contract, and not the Iowa OCA, contrary to Defendants' assertions. (App2. 622; Defendants' Brief, p.17): "…[Y]our fees are based on a percentage of HLF's fees after split with Lucas."). This is describing the Swanny Contract, as that is the only contract involving Lucas Wilson, and says nothing about the exact fee split between Larew and Hope.

Hope resurfaced, support awarding an amount of fees significantly exceeding the amount retained by HLF.

B. Other Essential Factors Should be Considered in Determining *QM* and Whether to Enhance the Lodestar, or Maintain it

Larew asserts that, consistent with the law in other states, several other factors should be considered in calculating *QM*, and support his full fee request. Specifically, the experience, reputation and ability of counsel, amount and results obtained, contribution of others, the nature and difficulty of the responsibility assumed, and the circumstances of the termination, are all key to equitable entitlement to *QM* here, and should be adopted in Iowa. *Compare Kelly, Shuttleworth*, 248 N.W at 15 *with Faricy Law Firm*, 912 N.W.2d at 658 (Minnesota case reviewing same).

In their most recent tangled web, Defendants rely on the role of a "rather young attorney" (Defendants' Brief, p.13), local counsel Lucas Wilson, to explain/justify the actions that they, themselves, took to remove Larew from *Swanny*. *See* Defendants' Brief, pp.20-22. They now assign Wilson the *sole* responsibility for their own conspiracy to bring in new counsel: ". . . it was understood by all that this was recommended by Lucas Wilson and followed by Hope and S&B[.]" (*Id.* at 21-22). Defendants' more recent fabrication of Wilson's singular responsibility for the treatment of Larew is laid bare by Hope's earlier Declaration, filed in this case in 2018:

> 16. After the jury verdict, I discussed that status with HLF's associate, Travis Burk. Through those discussions Hope Law Firm considered the various issues and processing and determined that it was likely that Sauro & Bergstrom (who we had previous knowledge and experience with), through Brenda Sauro and Adina Bergstrom, were best able to process bad faith presentation, post-trial motions and defend any appeal. *It was thought that this should be discussed with Lucas Wilson and then, if he was of a like thought, with Mrs. Anderson.*
>
> …
>
> 22. *HLF determined* to recommend to Lucas Wilson and Mrs. Anderson that other counsel should be retained to lead counsel process the *Swanny* case after the jury verdict. This recommendation was for retention of the law firm of Sauro & Bergstrom.

(App2. 26, ¶16, 28, ¶22) (*emphasis added).* This Declaration by Hope, submitted to the district court *before* trial, contradicts everything Defendants asserted *at* trial and assert *now* about Wilson's role and responsibility. Larew's removal was not Wilson's idea at all. Hope and Burk did not arrive at their October 24, 2013 meeting with Wilson to "first learn" (Defendants' Brief, p.20) his thoughts about new counsel, only to be persuaded and ultimately agree to that necessity. Wilson was not the one who raised the issue of removing Larew, as Hope claimed at trial ("[Wilson] is the one who brought up—he is the one who brought up obtaining counsel moving forward." (Hope T. vol.VIII, p.56, ll. 21-22).[4] Rather, as

[4] This type of inconsistent testimony compared to written submissions is also what led Judge Telleen (in Hope's own attempt to obtain *QM* in *Freeman*) to find Hope to not be "remotely credible" and, "contradictory and simply not believable." (App1. 236-37).

described in Hope's Declaration, he and Burk planned that scheme, and its orchestration and timing are directly relevant to Larew's *QM* claim.

Defendants' subsequent inventions to shield themselves from responsibility for removing Larew from *Swanny* are contrary to Hope's own Declaration, other reliable evidence, and are simply not believable. HLF attorney Gary Hill had a front row seat to Hope and Burk's plan to remove Larew, and it was not Wilson's idea, as Hope previously admitted. (App2. 26, ¶16; Hill T. vol.VII, p.61, l.19—p.67, l.19). Likewise, Hope initially indicated in his interrogatory answer that the purpose of the October 24, 2013 trip to Minnesota was simply to "discuss the Swanny trial… and …[thank] Mr. Wilson for all his hard work." (App1. 404-14, 421-38). These statements directly conflict with Hope's subsequent testimony. *Cf.* App1. 415-17, 434-38 *with* Hope T. vol. VIII, p.54, l.24—p.64, l.4.

Wilson, for his part, confirms that he did not know that Larew and Hope no longer worked together, even after the two October meetings with Hope and Burk, only learning such in his serendipitous telephone conversation with Larew the morning after the secret October 31 meeting. (Wilson Dep., p.89). Indeed, Wilson testified that if he had known, he would have informed Larew of their meeting with the client. (*Id.*).

Wilson wrote in his April 9, 2015, Minnesota lien proceeding affidavit that he "understood Mr. Larew's role was complete upon conclusion of the

trial, and he would not be handling any post-trial matters." (App1. 1011, ¶6). There is nowhere Wilson would have acquired that understanding other than from meetings with Hope and Burk on October 24 and 31—he certainly did not hear that from Larew, who fully intended to continue litigating *Swanny*. (App1. 761-62, 769-77; 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).

Years later, Wilson offered deposition testimony (adopted by Hope and Burk at trial and posited in Defendants' Brief) that it was *his* idea that new Minnesota counsel replace Larew because he was "frustrated" that he had not heard from Larew for weeks following the verdict. (Wilson Dep., pp.35-36). Wilson (and Defendants) claim(s) that he was concerned about Larew's past performance, despite Larew having obtained the $1,134,500 verdict. (Defendants' Brief, p.20). Not only is this testimony inconsistent with Wilson's prior testimony, it is not plausible in light of the record. Larew and Diallo sent Wilson three separate emails on each consecutive day after the Swanny verdict, to which he responded, including on October 18, 2013, since Wilson had not been copied on an email from the Court regarding scheduling of "a phone conference with the attorneys to discuss what needs to happen going forward…, " obviously to discuss the upcoming penalty phase. (App1. 761-62, 769-77; Diallo T. vol.IV, p.31, l.15—p.34, l.9). Wilson then (oddly) did not respond to another October 23, 2013 email from Diallo (App1. 403) asking

him to assemble his time records, the very day before he meets with Hope and Burk and supposedly complains to them about not knowing what is going on in the case. (Wilson Dep., p.40, ll.8-9).[5] Wilson also billed expenses to HLF for the first time on October 28, 2013. (App1. 170). Wilson was not the mastermind of this coup. He did not drive to Des Moines looking for assistance from the attorneys who had never met the client, or him. Hope and Burk drove to Minnesota. (App1. 560, 1190; App2. 108, 888). Those facts are undisputed. Hope's Declaration, Hill's testimony, and common sense prove that Hope and Burk initiated Larew's removal from *Swanny*. The motive is clear: to obtain fees in a case they had abandoned while concomitantly depriving Larew of those fees. Now, *QM* must consider all these factors in determining Larew's appropriate fee.

And while Defendants repeatedly reference Larew's failure to inform Mrs. Anderson that he no longer worked with HLF (Defendants' Brief, pp.18, 23, 37, 44, 57), and attendant apology, they ignore Hope's own corresponding duty to so inform Mrs. Anderson, particularly before asking her to sign an Addendum that changed counsel. *See* C. Anderson Dep., p.35, l.25—p.36, l.4-

Q: "What were you told at this October 31 Halloween meeting by Mr. Hope, in

[5] In addition, Wilson testified regarding the October 24, 2013 meeting that "[w]e needed to find attorneys to handle the appeal." (Wilson Dep., p.42, ll.16-20). The bad faith portion of the trial had not even been scheduled at this time, and Larew and Diallo were actively working on the case.

particular? A: Well, that we had needed an—going to proceed with an appeals attorney, and that was Brenda and Adina."). Defendants' Brief states: "Finally, at the meeting [on October 31, 2013] it was understood that Larew was part of HLF in the handling of the case and would be paid as per the agreement Larew had with HLF." (Defendants' Brief, p.22). Aside from contradicting Hope's testimony that Larew was never discussed at that meeting (Hope T. vol.IX, p.135, ll.12-14), this only confirms that Mrs. Anderson, her son Michael, Wilson, and S&B were not fully informed by Hope and Burk, both of whom knew that there was no agreement with Larew as to his compensation. Yet, Hope and Burk executed an Addendum to the *Swanny* representation agreement that included a new clause specifically limiting representation to the three firms in the room. (App1. 419-20).

Larew did tell Mrs. Anderson that he made a mistake in not informing her, and admitted his error.[6] Larew had acted pursuant to his understanding of his post-OCA agreement with Hope that he would continue to work on *Swanny*, without Hope. (Larew T. vol. II, p.25, l.1—p.27, l.19). Larew has paid for that mistake since the day Hope reappeared and orchestrated his removal from *Swanny*, and in the toll of this continued litigation. Hope, however, has

[6] *Swanny* was the first case in which Hope breached their agreement that Larew primarily would continue to represent specific HLF clients post-OCA termination, and then College Springs followed soon thereafter, as described in Larew's opening Brief, p.27.

never paid. That Hope still does not recognize his own error in failing to inform Mrs. Anderson at the October 31, 2013 meeting of his terminated relationship with Larew—and his unlawful threat that Mrs. Anderson would still owe HLF under the contract if she terminated HLF and stayed with Larew—is troubling at best. (App1. 453; C. Anderson Dep., p.42, ll.22-25). "Clients are not chattels to be bought and sold." *Walker v. Gribble*, 689 N.W.2d 104, 112 (Iowa 2004). While *QM* is generally about what Larew deserves, and less Hope/HLF, such behavior is implicated here because of the manner of termination[7] of Larew. *Cf. West v. Jayne*, 484 N.W.2d 186, 190-91 (Iowa 1992) (enforcing express oral contract and noting that QM was not implicated in suit by disbarred attorney). And here, in reviewing the various contributions of the firms in terms of both time and substance, there is no comparison. Larew's lodestar is more than Hope retained in *Swanny*, and that is equitable based on the facts of this case.

Finally, to the extent that Defendants appear to be making a policy argument, several responses are in order. *See* Defendants' Brief, p.44: "To allow Larew to now obtain a greater portion of the fee would be to encourage attorneys to fail to inform their clients of changed arrangements wherein the

[7] Withdrawing counsel (unlike wrongfully discharged counsel) who seek greener pastures, or actively work against former clients, are not entitled to any *QM*. *See* App1. 236, 237, 243, 245-53.

client's interests have been affected by the attorneys." First, this case is certainly unique. Second, the public policy implications of this case are much more about attorney ethics, and the need to consider all relevant factors in fee disputes among attorneys. Third, Mrs. Anderson was not harmed by Larew's actions, but by Hope's. And fourth, this is perhaps Defendants' most duplicitous argument, as again it is hiding behind a client's interests when Hope put *anything but* Mrs. Anderson's interests first: It cannot reasonably be argued that replacing the trial attorney who won a $1,134,500 verdict in the first phase of a case of first impression, with a second phase pending, would "best serve the interests of the client." (App1. 439). It is demonstrably preposterous in this case, as subsequent counsel almost lost Mrs. Anderson $275,000 by misunderstanding the verdict itself (*see* App1. 492-94, 495-538, 539-52).

The law requires *QM* where parties proceed under an implied-in-fact contract, and the value of Larew's services, unchallenged here as to the reasonableness of the hours and rates, far exceeds the amount *Hope decided* to keep under the Addendum. Moreover, to flip Defendants' proposition, allowing HLF to retain so much of the fees in this case would encourage attorneys to have other attorneys do all the work, lay in wait to see how trial goes, then return and fire the trial counsel, grasping control of the fees without

any intent to ever pay them to the attorney who had earned them.[8] And that is exactly what has come to pass here. The district court erred in not considering and making findings, as part of its determination of *QM,* regarding all of the circumstances of the termination of Larew from his representation in *Swanny*. Such an equitable review of the situation should inevitably lead this Court to an award of fees equaling Larew's lodestar, which is above, and not limited by, the Addendum amount received by HLF. Indeed, in reviewing the hours submitted by Larew and HLF, it is clear that more than 90% of the work was conducted by Larew and his office, even accepting Hope's hours as accurate.[9] For the foregoing reasons, the district court's determination as to the calculation of *QM* should be amended and found to include the entire lodestar amount: $873,839 (App2. 100-101), or such other amount as this Court deems equitable.

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[8] Contrary to Defendants' repeated assertions regarding offering to pay Larew 40% of the fees, there is no dispute that that was never done. Moreover, Larew's experience, based on College Springs, was that even when Larew sent the check for attorneys' fees to HLF, Larew did not receive any payment back. *See* App1. 763-66; App2. 169.

[9] Hope includes, in his summary of hours, time for attorney Henson, who stipulated to the fact that she did not spend any time on *Swanny*. *Compare* App2. 903-04 *with* Stipulation, T. vol.IX, p.4, l.5—p.7, l.12. In addition, Hope's own time includes hours for work related to the attorney lien dispute, and not at all related to assisting Mrs. Anderson in her case. *See* App2. 894-99; including 12 hours to drive to mediation on fees and 12 hours to drive to hearing on fees; *see also* App1. 351, 553-67, 568-70; App2. 881-917).

IV. THE DISTRICT COURT PROPERLY DETERMINED THAT LAREW DID NOT INTERFERE WITH THE SWANNY CONTRACT

A. Standard of Review and Error Preservation

Plaintiff agrees with Defendants that the appropriate standard of review of this finding is correction for errors at law. Plaintiff further agrees that Defendants preserved error on this issue.

B. Larew Fulfilled the Obligations of HLF Under the Swanny Contract

The district court properly held that HLF's counterclaim against Larew for intentional interference with contract failed. (App1. 179). The district court found that there was no substantial evidence of either Larew having improperly interfered with the Swanny plaintiffs' performance of the HLF contingent fee or that said interference caused the Swanny plaintiffs not to perform. (*Id.*). The district court saw clearly: "The fact is this lawsuit probably would not even have been filed but for the efforts of Larew which resulted in a jury verdict far exceeding anything the defendants ever imagined…." (App1. 180).

Plaintiff concurs and asserts that Defendants fail on at least three elements of a claim for intentional interference:

> (1) plaintiff had a contract with a third-party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) the interference caused the third-party not to perform, or made performance more burdensome or expensive; and (5) damage to the plaintiff resulted.

Green v. Racing Ass'n of Cent. Iowa, 713 N.W.2d 234, 243 (Iowa 2006). Not only did Defendants not prove elements (3) and (4), they also did not prove (5), as no damage to Defendants resulted. Defendants obtained a huge windfall in taking (and spending) $388,412 in unearned fees.

Moreover, there can be no claim that Larew "intentionally and improperly interfered" with the Swanny Contract. Larew met HLF's performance obligations under the Swanny Contract when Defendants had abandoned it, from May of 2013 to October 2013. There was no interference by Larew, let alone improper interference. *Green*, 713 N.W.2d at 244. Finally, the performance of Larew under the Swanny Contract did not cause Mrs. Anderson not to perform, as after she was threatened by Defendants—(App1. 453; C. Anderson Dep., p.41, ll.21-25—p.42, ll.1-25; Wilson Dep., p.161, ll.12-23)—she terminated Larew and ratified the Addendum. (App1. 481-82). There was no interference, only performance; Mrs. Anderson upheld her part of the bargain, paying $683,483.19 in attorneys' fees plus reimbursing costs and expenses. Defendants suffered no damages.

CONCLUSION

For all of the foregoing reasons, and those cited in Larew's original Brief, Plaintiff respectfully requests that this Court:

1. Affirm the district court's finding of an implied-in-fact contract between Larew and HLF, the breach of such contract, and entitlement to *quantum meruit*;
2. Review and calculate, *de novo,* the *quantum meruit* value Larew's services, considering all of the relevant factors, including the lodestar, the result obtained, and the manner of Defendants' terminating Larew's representation, and award $873,839, plus interest;
3. Reverse the district court on its finding of no liability for HLFA as the continuation of HLF and remand for entry of judgment that includes HLFA;
4. Reverse the district court on its findings of no liability for Defendants Hope and Burk individually; and
5. Reverse the district court's findings on conspiracy, conversion, and punitive damages, and remand to the district court for a determination of damages associated with each claim.

Dated this 15th day of October, 2021.

Respectfully submitted,

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CERTIFICATE OF FILING/SERVICE

I hereby certify that on October 15, 2021, I electronically filed the foregoing Final Reply 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. Pursuant to Rule 16.317(1)(a), this constitutes service of the document on the following for purposes of the Iowa Court Rules.

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

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because: this brief contains 6,928 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because: this brief has been prepared in a proportionally spaced typeface using Microsoft Word 1997-2004 in size 14 Garamond.

Dated this 15th day of October, 2021.

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