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. CVCV 055562
HON. ROBERT B. HANSON, JUDGE

# FINAL BRIEF OF HOPE LAW FIRM, P.L.C., DEFENDANT/APPELLEE/CROSS-APPELLLANT AND ANDREW L. HOPE, TRAVIS J. BURK and HOPE LAW FIRM & ASSOCIATES, P.C., DEFENDANTS-APPELLEES

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## ROUTING STATEMENT

This matter should be transferred to the Iowa Court of Appeals for determination. This case was tried in law to a District Court as fact finder and involves the application of established legal concepts and principles. Specifically, this case relates to the method of calculating, and the amount of payment for, attorney services by a law firm with a fee agreement with a client for the services of attorneys who are requested to, and do, provide services for that law firm in representing that client but whose relationship in providing services is altered and terminated by the client before the services are concluded. *See Iowa R. App. Proc. 6.1101(3)(a).*

## STATEMENT OF THE CASE

In June, 2011, James Larew d/b/a Larew Law Firm ("Larew") and Hope Law Firm, P.L.C. ("HLF") entered into an "Of Counsel" arrangement, which was memorialized in a written contract. (hereinafter "OCA")(App. One, p. 798 – 801). One case for which HLF had a fee agreement, the "Swanny case", was assigned to Larew to process. (App. One, p. 798-801; p. 802-805). The relationship between Larew and HLF degraded and broke with a formal termination in May, 2013. (Tr. Vol. 1, p. 93, 121). 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. (App. Two, 614-617, p. 618-620, p. 621-622, p. 623-626, p. 627-647). Larew continued working on the Swanny case and a jury verdict was awarded in the amount of $1,134,500. (App. One, p. 806-810). For various reasons as will be discussed herein, the client determined to retain the HLF team, with new appellate attorneys in Minnesota, to process the bad faith and appeal and otherwise conclude the case, and did not retain the Larew team. (App. One, p. 811-816). Much litigation, filed by Larew in Minnesota against the client to force attorney fees, was not successful for Larew. (App. One, p. 892-894, p. 895-897, p. 898-905, p. 906-920, p. 921-927, p. 928-956, p. 957-1007, p. 1008-1014, p. 1015-1029, p. 1030-1032, p. 1033-1047, p. 1048-1050, p. 1051-1053, p. 1054-1072, p. 1073-1089, p. 1090-1108, p. 1109-1124, p. 1125-1135, p. 1136-1137. The Swanny case resolved in 2016, which lead to Larew demanding from HLF the sum of $873,839 for his work in the case even though HLF, as admitted by all parties, only itself received funds of $330,893.82, or, depending upon certain reimbursement calculations, perhaps $388,412.02. (App. One, p. 1222-1232). That is to say, Larew wanted paid approximately $500,000 more than HLF received in the case and in an amount of over 77% of the jury verdict itself. . (App. One, p. 1222-1232). Under these circumstances, no money was paid by HLF to Larew, awaiting decision through arbitration or lawsuit. This litigation followed.

While the Appellees/Cross-Appellant do not agree with the various

extraneous mis-attribution assertions Larew inserts throughout the remainder of the Statement of the Case, the sequence of filings in the case are agreed and can be relied upon by the Court for sequencing.

## STATEMENT OF FACTS

Larew is an Iowa City based attorney. (Tr. Vol. 1 p. 35). HLF is a law firm with offices in Des Moines and West Des Moines. (Tr. Vol VII, p. 141, Vol. VII, p. 137) It is owned by Andrew L. Hope and had a number of employees, including Travis J. Burk. (Tr. Vol. VII, p. 89 -90). With the advent of change in tax laws, Andrew Hope, in 2018, additionally created the law firm of Hope Law Firm and Associates, P.C. ("HLFA")(Tr. Vol. VII, p. 90, 142, 143, Vol. IX, p. 11,12) It is a separate entity from HLA, but both law firms are wholly owned by Hope. (Tr. Vol. VII, p. 142, 143, Vol IX, p. 8). Burk was a W-2 employee and never had ownership interest in either HLF or in HLFA. (Tr. Vol IX, p. 13). Burk also had no interest in any fees earned, or to be earned, in the Swanny litigation involved in this case. (Tr. Vol. IX, p. 13-14). At all times in this matter, Hope was acting as an employee and agent of HLF. (T. Vol. VII, 96-97).

Beginning in March, 2011, Hope and Larew exchanged emails and worked out an arrangement to work together with Larew acting as Of Counsel to HLF. (App. One, p. 315-332). While the emails indicate the parties started working together on various cases, including with some office and equipment sharing, and with rent and

other shared expenses, the parties did not actually finalize any final and written "of counsel" relationship between Larew and HLF until June 16, 2011. ("OCA" or "June 2011 OCA") (App. One, p. 798-801).

The concept of HLF and Larew was that Larew would work to litigate various insurance cases, including bad faith cases that were developed by HLF. (Vol. 1, p. 51, 54, 56). The June 2011 OCA provided, among other things, that HLF would assign cases to Larew; Larew would manage the performance of all activities to litigate the cases with HLF providing administrative support; Larew would receive compensation based upon 40% of the net attorney fees collected on cases litigated by Larew; some office space would be provided to Larew; all records and files belonged to HLF; all fees and compensation belonged to HLF; either party could terminate the agreement at any time for any reason; all disputes between the parties were to be arbitrated. (App. One, p. 798-801).

In December 2011, Hope and Larew also made several trips to Minnesota to explore the possibility of processing insurance and bad faith cases in that state. (App. One, p. 339-342, p. 343-345, p. 346, Tr. Vol. I, p. 65-66). Hope and Larew discussed what the terms and conditions of the work might be, with several thoughts being expressed and set out in emails. (App. One, p. 831-859).Larew asserts that in a car trip coming back from Minnesota there was an oral Of Counsel Agreement agreed to between HLF and Larew. (Tr. Vol. 1, p. 135). It had several terms different

than the June 2011 OCA, including that there would be a 50/50 split of fees and that Hope would open an office there. (Tr. Vol. 1, p. 98). Hope agrees there were trips and investigations as to interest to develop work in Minnesota and discussions as to how that could be accomplished but Hope denies such an oral agreement was entered into. (Tr. IX, p. 79). Also, a review of later emails of Larew and Hope make no reference to such a of counsel agreement only applying to Minnesota case. Indeed, the later documents only reference or apply the June 2011 OCA, even as applied to the Swanny case which was pending in Minnesota. (App. One, p. 1033-1047, p. 1125-1135).

Meanwhile, toward the end of December, 2011, Hope received a call from a public adjuster Hope and HLF was familiar with, wherein a referral was made to Hope as to a fire loss case where the client was not able to obtain Minnesota counsel and the statute of limitations was close to expiring. (Tr. Vol. VI, p. 5). Hope advised the public adjuster he was willing to review the case; Hope contacted the potential client and requested and obtained the file; Hope also contacted Larew to evaluate the case; The client was Mrs. Anderson and her son, Michael Anderson, with a fire loss to the Swanny restaurant; Both Hope and Larew reviewed the facts of the case and determined to act to undertake representation; Hope contacted the client and work out the details; As the case was located in Minn. it was also necessary for a local attorney to be brought on board and Hope was referred to Lucas Wilson, a

rather young attorney, but one who had already developed a good reputation for being good and hard-working as well as organized and thorough. (Tr. Vol IX, pp. 122-123). Hope worked out an agreed fee agreement with the client and which brought Wilson in as local counsel. (App. One, p. 802-805). This was a contingent fee agreement that had a sliding scale of earned fee, with 38% being earned prior to appeal and 40% earned thereafter. (App. One, p. 803). HLF was to earn 75% of the fee and Wilson 25% of the fee. (App. One, p. 803). Hope and Larew worked out a petition to be used and got it to Wilson to be timely filed and served. (App. One, p. 168).

During 2012, the OCA relationship began to operate at full speed and was considered by both parties, for a while, to be mutually beneficial and profitable. (Tr. Vol. IX p. 93). Over time, however, dissatisfactions began to develop on both sides of the agreement and relationship. (Tr. Vol. IX, p. 93-96). By the time the parties got to the end of 2012, the disagreements had become so substantial that Larew requested his name be removed as being Of Counsel with the HLF. (Tr. Vol. IX p. 46). Larew later submitted an affidavit that stated that effective December 2012, the June 2011 OCA was no longer effective, and they were operating as co-counsel, and not Of Counsel. (App. One, p. 902, No. 12) Yet, as particularly relevant to this case, Larew also asserted in that declaration, under oath, that Larew and HLF had orally agreed to, and did continue to, operate under the terms and conditions of the June

2011 OCA with the exception that they were co-counsel. (App. One, p. 902, No. 12)

By May 20, 2013, HLF reached the conclusion that the parties should no longer work together on cases. (Tr. I, p. 131). A formal termination notice as to the June 2011 OCA was sent on that date by Hope to Larew. (App. Two, p. 614-617). Hope testified his intent was to eliminate any claim that new cases that came into the HLF were to be subject to the June 2011 OCA. (Tr. Vol X, p 55-56; App. p. 798-801). 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). As to the attempted changed relationship, HLA initially proposed that Larew take representation of certain cases, HLF take representation of certain cases, the respective firms withdraw from representation in the cases they were not continuing in and that an overall alternation of the fee divisions be agreed to. (Tr. Vol. IX p. 98, (App. Two, p. 615). This was not accepted by Larew (App. Two, p. 620). Throughout the months of May and June, 2013, the parties engaged in repeated attempts to reach an agreement to address these ongoing cases, with emails being exchanged between Hope and Larew. (App. Two, p. 614-617, p. 618-620, p. 621-622, p. 623-626, p. 627). At times the emails suggest an agreement may have been reached, only to be followed by further emails denying the agreement. (App. Two, p. 614-617, p. 618-620, p. 621-622, p. 623-626, p. 627 ).

Yet other attempts were made, with yet another failure to reach agreement. (App. Two, p. 614-617, p. 618-620, p. 623-626, p. 627) Some of these emails evidence substantial disagreement and even animosity between the law firms. (App. Two, p. 614-618; p. 618-620, p. 621 – 622, p. 623, p. 811-817I). For example, in an email exchange occurring on June 28 and July 1, 2013, Larew and Hope had the following exchange, in part:

> Hope states to Larew:
>
> "I've brought you into all the cases as associate counsel. You are entitled to receive a portion of HLF's fees on the cases you were asked to join. You do not have a contract with any of the clients. If there is a conflict that has arisen, then I can associate another lawyer, but my contract remains and I will be paid for my services. Likewise you have a right to arbitrate for any fee that may be owed to you pursuant to our old agreement."
>
> Larew states to Hope:
>
> "For now, however, please know that I understand the attorney-client contracts were signed between HLF and the clients. I also will not take on full representation of any client without a separate attorney-client agreement with said client. This is not by your directive; it is what the law requires. As to ethical obligations to inform clients of matters, those obligations include a duty to inform clients of all conflicts or potential conflicts, of interest, issues of possible witness impeachment, etc."

(App. Two, p. 620).

At no time were they able to work out a final agreement to apply to all cases. (App. Two, p. 614-617, p. 618-620, p. 621-622, p. 623-626, p. 627). As to the

Swanny case in particular, it appears the parties overall were of the thought and concept that Larew would continue working on the case. (Tr. Vol. 5, p. 27). Yet, even as to the Swanny case, no final agreement was able to be reached. The last two exchanged emails on the Swanny case are the dates of July 8 and July 9, 2013. (App. Two, p. 621-622, p. 623-626). Those emails, evidencing and demonstrating the ongoing dispute and lack of agreement as to the Swanny case, set out, in part as follows:

Email of Hope to Larew, July 8, 2013 at 9:51 a.m. (App. Two, p. 622), states, in part:

> "Swanny – Now that you claim we didn't reach an agreement on this case, we need to agree on a percentage on this case if you intend to move forward with representation. I also need some assurances that you are prepared to go to trial and the case will not be continued again. If we cannot agree, then I will make arrangements to provide the client with a MN trial lawyer. The client, of course, will make the final decision. As it stands, your fees are based upon a percentage of HLF's fees after the split with Lucas. The most the client will owe you is a percentage of HLF's fees. If I have to bring in another attorney to handle trial, then HLF's fees will be reduced, but the client will not be obligated to a greater fee percentage."

To this email, Larew made only one response, on July 9, 2013, at 12:43 p.m., by stating, in part:

> "G. Swanny. Your sudden interest in this case is notable. As you have never met them, I would hope you would agree to listening to any opinions they might have with respect to your intervention in the case – if that is what your note below implies. This is not a case that involves issues of disqualification or conflicts of interest. In any event, I believe that this is a case that may well involve court supervision of attorney fees awards – if we are successful in a very challenging legal environment."

(App. Two, p. 625).

This state of non-agreement, other than the existing oral agreement to continue to operate under the June 2011 OCA until a new agreement was reached, continued to exist thereafter and continues to exist until the present date as no new agreement was ever able to be reached. (Tr. Vol. VIII, p. 13-15).

This failure to reach an agreement to replace the existing terms and conditions of the June 2011 OCA has resulted in a number of serious disputes and other difficulties. HLF, for its part, states that it did not go to the Swanny client and discuss the issues, as it believed the ultimate resolution was that the terms of the June 2011 OCA continued to control and there was no effective change in terms to cause a need for client communication. (Tr. Vol VII, p. 15, Vol. VIII, p. 49).

Larew, on the other hand, makes several assertions which are somewhat inconsistent. He claims that he was substituted in as attorney under the Swanny fee agreement. (Tr. Vol. V, p. 24). Yet, he did not get the client's consent to that substitution. (Tr. Vol. VI, p. 58-59). Nor did Larew get the consent of the co-counsel, Lucas Wilson. Yet Larew asserts in this case the dispute and changed condition occurred as early as May 2013 and trial in Swanny was not until October 2013. Larew also admits that he did go to other clients of the HLF, obtained separate fee agreements and took over sole responsibility and handling of the cases. (Tr. Vol VI, p. 36-37). Further, Larew admitted he told the Swanny client in November 2013

that he made a mistake in not advising of the changed relationship. (App. One, p. 923-924). As it relates to this Swanny case and relationship, the parties agree that at no time prior to the jury trial was the Swanny client, or Lucas Wilson, told by Larew that the relationship of Larew and HLF had changed in any significant degree as it related to the Swanny case. (App. One, p. 923-924). .

Exhibit A is a timeline developed from the evidence in this case. (App. One, p. 794-795). From December 23, 2011 to May 21, 2013, Larew was assigned the Swanny case and acted as lead attorney for the litigation. From May 21, 2013 to October 2013, Larew undisputedly continued to be the lead attorney in the processing of the Swanny case. Throughout that entire time HLF undisputedly remained as the attorneys for Swanny and with the fee agreement in effect. The record shows the majority of the out of pocket expenses for the litigation were either paid by HLF Trust Account and paid before May 21, 2013 (termination of the OCA) or were actually paid by Larew after, and not before, the October 2013 jury trial. (App. One, p. 1207, p. 1199-1203). Larew claims these later incurred expenses were his contribution to the case, but ignores that Larew did not submit these later incurred expenses incurred to HLF for reimbursement, though requested to do so. (App. One, p. 834 where that was requested). Further, after Larew was terminated by the client in November 2013, HLF continued to advance the out of pocket costs for the processing of the litigation. (App. One, p. 822, App. Two, p. 665-666).

In October 2013, the Swanny case proceeded to trial. Larew served as lead trial counsel and the Swanny client felt he and HLF provided good services. (CA Depo p.70-73.) Lucas Wilson served as local counsel and had a special and good relationship with the client. (Tr. Vol. III, pp. 145-146). The outcome was quite successful with the jury returning a verdict for the Swanny client in a sum of $1,134,500. (App. One, p. 807-810). This was gratifying to all involved.

Larew did not call HLF as to the outcome on the Swanny verdict. (Tr. Vol VII, pp. 120; Tr. Vol IX, p. 128)). Hope wrote an email to Larew congratulating him on the outcome and advising HLF would work with Larew on the upcoming bad faith portion of the case.

Hope, having the existing fee agreement with the client and not having an understanding as to what had happened or how the matter would be processed, and not having a good or working relationship with Larew, decided to go talk to Lucas Wilson to discuss the case and get updated on the processing of the case. (Tr. Vol VII, pp. 111-120; Tr. Vol. VIII, pp. 55). When they met on October 24, 2013, Hope first learned that Lucas Wilson was concerned about issues involving the further processing of the case. (Tr. Vol. VII, pp. 118; Tr. Vol IX, 129-130). Wilson told Hope and Burk that while Larew had done a good job in getting the verdict, from the past work of Larew, he was concerned as to the prompt and timely processing of the bad faith matter and the post-trial proceedings and appeals. (Tr. Vol VII, pp. 111-

121). The bad faith process was new in Minn. and the appeal process was complicated and talk of bringing someone else in to help on the appeal had already occurred as early as the meeting at the ice cream shop after the trial. (MA Depo. p. 32). In this meeting Wilson recommended for the good of the client, that a search be made to obtain additional counsel to help with the case from this time out. (MA Depo, P. 25; Tr. Vol. VIII, pp. 55).

As a result of the October 24 meeting, both Wilson and Hope began to reach out for someone to be brought in to help with the future processing of the case, should the client agree. (Tr. Vol VII, pp. 112-119). Wilson talked to someone he knew in his office building. (Tr. VII, pp. 114). The name of Sauro & Bergstrom came up in this context. ("S&B"). (Tr. VII, pp. 113; Tr. Vol. VIII, pp. 59-60, 62-64). S&B were well known attorneys in Minn. as it relates to insurance litigation and as to knowledge of the new bad faith law. (Tr. VII, pp. 113-114; Tr. Vol III, pp. 11-23, 120-121; Tr. Vol IX, pp132-133). S&B also had previous connection to the case, as the Swanny client had originally wanted Bergstrom to take the Swanny case, but Bergstrom was with a law firm that would only take the case on an hourly basis and the Swanny could not afford and hourly fee charge. Further S&B had previously helped Larew in the phraseology of motion for and pleading of the bad faith portion of the case under Minn. law. (Tr. Vol. III, pp. 16-17). HLF did contact S&B who agreed to meet and discuss possible involvement in the case. (Tr. Vol III, pp. 98).

That meeting occurred on October 31, 2013. (Tr. Vol III, pp. 98). At the meeting S&B agreed to become involved if the clients agreed. (Tr. Vol. III, pp. 33-45; 98-103). During this meeting Lucas Wilson called the Swanny clients and requested they come to the meeting at S&B offices. (Tr. Vol. III, pp. 33-45). When the Swanny clients came in, discussions occurred as to S&B becoming involved and working on the case. (Tr. Vol. III, pp. 33-45). No testimony was inconsistent with the thought of all involved in the meeting, Brenda Sauro, Catherine Anderson, Michael Anderson, Lucas Wilson and Andrew Hope, that it was a good and positive meeting; that the Swanny client was excited about S&B coming into the cases as she liked the attorneys and was glad they were going to help; that it was understood by all that this was recommended by Lucas Wilson and followed by Hope and S&B, as good for the client and good for the processing of the case. Larew would remain as part of the HLF in the case, just like Hope and Wilson to assist. (Tr. Vol III, p. 102; 115-116; Tr. Vol. VIII, pp. 63-64; Tr. Vol IX, pp. 134-136). Finally, at the meeting it was understood that Larew was a part of HLF in the handling of the case and would be paid as per the agreement Larew had with HLF. (Tr. Vol III, 46, 103, 112-113; 125; CA Depo pp. 81-88).

A supplemental addendum was executed between the attorneys and the Swanny client. (App. One, p. 811-816). It provided the client was not to pay any more monies than already agreed to; that HLF would pay the first $40,000 of hourly

fees incurred by S&B; that was intended to reduce the cost if a quick and timely settlement was obtained; that S&B would be paid a contingency out of the current attorney's fees, when collected if the case went on and much more work was performed; that S&B would take over as the lead attorney for the case in all future processing. (App. One, p. 811-816).

After the October 31, 2013 meeting, S&B began to process the case by sending emails to the necessary parties. (App. One, p. 835, p. 839-840, p. 442-445). Further, HLF sent an email to Larew advising Larew that, in consultation with the client, it was determined best for the client to have S&B take over as lead counsel. (App. One, p. 834). Hope testified it was his intent that S&B takeover as lead counsel but that Larew remain in the case to help as needed. (Tr. Vol. VIII, pp. 85; 88; Tr. IX, pp. 34-37). Hope also testified it was always intended Larew would be paid his compensation under the June 2011 OCA for his work on the case. (Tr. Vol IX, p. 26-27). Indeed, HLF has previously offered to pay Larew 40% of the net fees, and Larew refused. (See Tr. Vol IX, p. 29; Tr. Vol X, p. 41-42).

Larew became upset about this change of lead counsel. (App. One, p. 839). He immediately called the Swanny client and expressed his shock and dismay. (App. One, p. 923-924). The Swanny client was surprised as she did not know anything had changed between HLF and Larew. (App. One, p. 923-924). Larew apologized for not explaining, admitted he should have done so and that he had made a mistake.

(App. One, p. 923-924). He advised the Swanny client to contact an independent attorney as to a decision to make such a change in counsel. (App. One, p. 923-924).

The Swanny client followed Larew's advice and talked to an independent attorney who advised it was not unusual to bring in new counsel for post-trial and appeals. (MA Depo. P. 30). The emails also note that S&B and Lucas Wilson were in contact with Mrs. Anderson and Michael Anderson and discussed the change in counsel contemplated by the Addendum and the clients "don't 'buy what Jim is selling", i.e. that Larew should remain as lead counsel. (App. One, p. 837). Larew was, at this time, demanding that the client decide whether or not to discharge Larew from the case. (Tr. Vol. VIII, pp. 79-80; App. One, p. 839). A letter outlining her options was sent to Mrs. Anderson by Lucas Wilson. (App. One, p. 848). It provided for continuing with the current addendum with S&B, HLF, and Wilson, continuing with Larew, or discharging HLF, Wilson, Larew and S&B and hiring new attorneys. (App. One, p. 848). Larew sent an email suggesting an additional option which allowed for Larew and Wilson to remain as her attorneys. (App. One, p. 845). Larew did not suggest that both Larew and S&B continue as attorneys. (CA Depo, p. 74-5). On November 5, 2013 the written directive by Mrs. Anderson discharging Larew was communicated to Larew. (App. One, p. 848, Tr. Vol III, p 117). Larew then agreed to, and did, withdraw from the case as the client had terminated him from the case.

As to this, it should be noted the clients have testified: (1) there was no pressure to hire S&B. (CA depo. p. 93); (2) that Larew had no contract with her and she understood he would be paid by HLF. (CA depo p. 81-88); (3) Larew did not offer the option of Larew and S& B and she thought S&B was the best option. (CA Depo. p. 93). (4) Lucas Wilson, not HLF, brought up the need to hire a Minn. appeal attorney and it was discussed the day of the verdict. (MA Depo, p. 25 and 32); (5) The Swanny client sought an independent attorney who advised hiring another attorney after a trial is not unusual. (MA Depo, p. 30; (6) all attorneys did a good job; (CA Depo, p. 98-99); (7) The client thought Larew was always with HLF through the trial. (CA Depo p. 86); (8) The Swanny client was pleased with the services of S&B, as well as Wilson and HLF who all worked in her best interests. (CA Depo pp. 99-100).

S&B then began with earnest the preparation for the bad faith portion of the case. (Tr.Vol.III.11, 60-75). Attempts were made to get the file from Larew. (Tr.Vol.III.54, 59). That was forthcoming, although the parties disagree as to the promptness of response by Larew. (Tr.Vol.III.54, 59, Tr.Vol.II.20). Affidavits were obtained from HLF and Larew as to work performed on the case for use in the bad faith proceeding. (Tr.Vol.III.63). Post-trial motions were filed by the Swanny case defendant, seeking JNOV and a new trial. (Tr.Vol.III.37, 65-66). This resulted in a bad faith trial, hearings on post-trial motions, entry of judgments and appeals. (App.

One, p. 860-868, p. 869-883, p. 884-891). At one-point S&B had to address that Larew had not obtained various documents and named an expert for use in the bad faith portion. (Tr.Vol.III.60-64, 66-68). The Court denied additional discovery as to those issues and S&B proceeded to use the information that was obtained and the experts that were named. (Tr.Vol.III.60-64). It was noted, however, that the Defendant in Swanny had named an additional expert for the bad faith portion and was able to take advantage of that fact and circumstance. (Tr.Vol.III.64).

The case went to bad faith hearing and the Court determined bad faith had not been shown to exist. (App. One, p. 860-868). The Court did uphold the Swanny verdict and added prejudgment interest and awarded court costs. (App. One, 869-883). Appeal was processed, and the Swanny position was upheld on appeal. (App. One, p. 884-891). S&B provided most of the services for this work. This work amounted to increasing the final judgment and amount to be paid by the Swanny defendant from $1,134,500 when Larew was involved, to being approximately $1,800,000, including court costs, while S&B were involved. (App. One, p. 827-828).

Meanwhile, disputes ensued and were ongoing as to the attorney fees and the HLF obligation to pay Larew. On March 10, 2014, Larew filed for an attorney lien in the Swanny case proceeding in Minnesota. (App. One, p. 892-894). At that time, no judgment had been entered in the case and no money had been paid. Hope testifies

that at no time before then had anything been said to state that Larew would not eventually receive his compensation under the June 2011 OCA for his work in the Swanny case. (Tr.Vol.VII.154-156, Tr.Vol.III.46). The attorney lien, and affidavit by Larew, stated the quantum meruit value of Larew's work in the case was over $873,000. (App. One, p. 903). As to this, the affidavit of Larew stated, in part:

> "25. The original attorney fee contract under which our law firm performed services, a contract executed by Hope Law Firm and Mrs. Anderson, capped legal fees to 38% of the gross settlement or judgment. Mrs. Anderson's decision to terminate me and my law office – a decision that she had the right to do-for any reason, although I disagreed with it, and encouraged her to reconsider her action – had the effect of converting our contingency fee relationship with her to one of quantum meruit. If justice and fairness under these unusual circumstances require that the 38% cap would still apply, I believe that the vast majority of any fees owed should go to the Larew Law Office."

(App. One, p. 904). This allegation was read by the Swanny client, and S&B as her attorneys, to be requesting a lien for in excess of $873,000, a sum in excess of the contingency fee agreement, and almost 70% of the jury verdict itself. (App. One, p. 808-809, p. 903). That was met with swift rejection with an affidavit by Mrs. Anderson condemning the claim of Larew seeking what she considered to be an outrageous amount. (App. One, p. 924, ¶19).

Thereafter, Larew and his Minnesota counsel clarified the claim to be no more than wanting 90% to 95% of the 38% of the amount awarded in the case. (App. One, p. 907-908). Yet, even that claim by Larew amounted to a claim of leaving only 5% to 10% to be shared among HLF, Lucas Wilson and S&B. (App. One, p. 903-904,

p. 907-908, p. 808-809).

HLF asserted the June 2011 OCA applied, which allowed for a 40% payment of the net fee received by HLF. (App. One, p. 930-931, p. p. 798-801). The Court in Minnesota determined that Larew had no right to an attorney fee lien having no fee agreement, express or implied, with Swanny. (App. One, p. 1033-1047). The Court in Minnesota determined the remedy for Larew lay in enforcing the June 2011 OCA with HLF. (App. One, p. 1125-1135, summarizing the previous ruling).

At one-point HLF filed a Petition to Compel Arbitration under the June 2011 OCA. (App. One, p. 689-697). Larew resisted that attempt, contending that the June 2011 OCA, and arbitration, did not apply. (Tr.VolVI.71). That action was dismissed by HLF once it was known that the Minn. court had determined the June 2011 OCA applied, so Hope testified he assumed there was no need for the proceeding or Arbitration. (Tr.VolIX.41) Larew has never attempted to compel arbitration to resolve this dispute. (Tr. Vol. VIII p. 36).

While S&B, Wilson and HLF continued to process the case and provide services on the Swanny litigation, Larew determined to file another attempt at an attorney lien proceeding. This was filed on February 17, 2105 and sought a lien on the judgment that had just been rendered in the amount of $1,426,621.06. (App. One, 1048-1050, p. 1128), Larew contended for a lien of 38% of the judgment, or $542,116.00, which left 2% to be divided among HLF, Lucas Wilson and S&B.

(App. One, p. 1129). Once again the District Court in Minn. held that Larew did not have an implied contract with the Swanny client; was not entitled to an attorney lien on the judgment; was bound by the June 2011 OCA, and his remedy lied in asserting that agreement was void or that there was an enforceable oral agreement as to Minnesota cases. (App. One, p. 1125-1135).

S&B, Lucas Wilson and HLF continued in the process of attempting to sustain the jury verdict and increase the amount of the judgment. Larew, understanding that the final judgment was coming soon, wrote a letter dated March 1, 2016, to HLF making demands as to payment for his services in the Swanny case, along with other cases and matters. (App. Two, p. 184-196). Of particular note for this case is:

> I agreed to limit my fees in the Minnesota Court proceedings, as against Mrs. Anderson and Swanny of Hugo, Inc., because that is the amount that she agreed upon and I believed it was in her best interest to proceed in that manner, in that forum. However, that protection afforded to her is not applicable to you.

(App. Two, p. 186). Of further note for this case and regarding the specific demands by Larew on HLF relating to the case:

> In sum, I request that you take prompt action on all of the following matters in response to this letter:
>
> …
>
> 3. Impress a trust on, and provide your written confirmation that such a trust has been so-impressed, all attorney fees and expenses received by your office from the Swanny of Hugo v. Catherin Anderson v. Integrity Mutual Insurance Company litigation. I have already provided you the quantum meruit value of my work up through the trial, but not everything

> thereafter, including the time to assist in trying to help prove bad faith and fees and costs owed. I will accept $873,314, plus interest as allowed by law, as a full and final settlement of this matter, only.

(App. Two, P. 187-188). Hope refused to pay the demands of Larew and declined to place HLF funds in a trust condition. HLF once again notified Larew that his claims for services compensation under the June 2011 OCA were 40%, as he was told in the June 28 and July 8 emails, and reminding Larew of the client's concerns with his performance. (App. One, p. 1217-1219).

When the judgment amount was paid, it was paid to S&B and placed in their trust account in Minn. (Tr.VolIII.75-76, App. One, p. 811-816). The accounting to Swanny was processed and completed. (App. Two, p. 668). The amount to be paid as attorney fees under the Addendum Fee Agreement was a gross of 40%. The final approval of the attorney fees and distributions were set out in an email, approved by Mrs. Anderson, (App. Two, p. 648-651) which provided:

| | |
|---|---|
| Total Gross recovery to client: | $1,708,707.98 |
| Less 40% Attorneys' Fees (for all firms) | $ 683,483.19 |
| Less costs Paid on client's behalf | $ 192,495.43 |
| Recovery to Client | $ 832,739.36 |

As to the division of the attorney fees:

| | |
|---|---|
| Sauro and Bergstrom | $166,062.17 |
| Hope Law and Larew Law | $388,421.02 |
| Wilson Law | $129,000.00 |
| Total | $683,483.19 |

As to checks for HLF/Larew Law, the checks were issued to HLF as follows

| | |
|---|---|
| Attorney Fees | $380,893.82 |
| Cost for Advanced fees to S&B | $ 40,000.00 |
| Cost for advanced fees to George Warner | $ 17,527.20 |
| Total | $388,421.02 |

(App. One, p. 817-819, p. 820-825, p. 826-830). HLF deposited the monies in its operating account. (Tr.VolVII.144). Larew and HLF were not able to resolve the dispute as to the amount of attorney fees to be paid by HLF to Larew for his services in the Swanny case. (Tr.Vol VII. p. 54-5). This litigation followed.

Originally HLF carried its operating account in an amount to cover to pay 40% of the net attorney fees per the compensation agreement terms in the June 2011 OCA. (Tr.VolVII.146, 147) HLF has, since that time, continued to carry out the business of HLF, but the amount in that account has dwindled. (Debtors Exam Subpoena Documents). A sufficient balance of monies has been posted for bond in this case to cover the judgment awarded by the District Court (Bond).

## SUMMARY OF THE ARGUMENT

In this case, Hope Law Firm received a total of $330,893.82 net in attorney's fees. Yet, the following Statement of the Plaintiff is made in his brief at page 51: "Based upon these factors, Larew should be entitled to $873,839 in QM." If allowed, this would be a fee of over $550,000 more than HLF received in the case from the represented client and a recovery of 77% of the actual jury award in the underlying case ($1,134,500) per the statement of Larew at page 48 of his brief. Faced with this demand, Hope Law Firm found it most appropriate to wait until a final Court opinion

is entered, before making payment of monies to Larew for his work in the *Swanny* case.

As it is, Hope Law Firm, P.L.C. has continued and still continued in business as of the time of trial. Hope Law Firm and Associates, P.C. is not a continuation of Hope Law Firm, P.L.C. such that it took on the debts and liabilities of HLF. Contract, Quantum meruit or implied contract do not justify more than $132,357.53 (which is 40% of the net fee actually received by HLF from the client) being paid to Larew for his work with the client in the *Swanny* case. There was no conversion, conspiracy or punitive conduct by any Defendant. The judgment against Hope Law Firm, P.L.C. in this case should be modified to the amount of $132,357.53.

## ARGUMENT

### I. THE DISTRICT COURT DID NOT ERR IN FINDING THAT HLFA WAS NOT A SUCCESSOR IN INTEREST TO HLF.

*A. Standard of Review and Error Preservation.*

A claim tried at law to the District Court is reviewed….. for correction of errors at law." *NevadaCare, Inc., v. Dept' of Human Servs.,* 783 N.W. 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 applications 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.

Defendants agree this issue was preserved in the parties Proposed Findings of Fact and Conclusions at Law and Motions to Enlarge Findings and Amend and that this action was tried as a law action.

*B.* *HLFA is not a mere continuation of HLF, and is not liable for the Judgment.*

Andrew Hope was acting as an agent for HLF. (App. One, p. 798-801). HLFA was subsequently formed by Hope as a new and separate entity in response to a change in tax law. (Tr. Vol. IX, p. 12). The assertion of creation of the HLFA Company within 3 days is one of the red herrings asserted by Larew in this case. It is true that this lawsuit was filed 3 days prior to the formation of Hope Law Firm and Associates, P.C. But of what relevance is that? This lawsuit was filed on January 9, 2018. HLFA was formed on January 12, 2018, with what understandably would have been after months of first seeking tax advice from its corporate CPA and legal advice from its corporate attorney. (Tr. Vol IX, p. 12). The evidence record before the District Court and this Court is that HLFA was formed for tax purposes and operated co-existing with HLF to the time of trial and HLF continues to exist.

"Continuation" for purposes of being liable for debts of a previous company may exist when there is a sale/purchase of prior entity and the prior entity no longer exists. Here, however, there was no sale or purchase and HLF continues to exist.

The last paragraph of the opinion of the Iowa Supreme Court in *Pancratz v. Monsanto Company,* 547 N.W. 2d 198 (Iowa 1996) is directly on point:

> "Furthermore, the evidence establishes that Knut Co. survived at least for some time, after the sale. While it is true that Knutson continued Knut Co's general corporate activities, it carried out such operations as a distinct and separate corporate entity. See *Weaver,* 730 F. 2d at 548. Unlike C. Mac Chambers, the record reveals no hint of a sham transfer. ….
>
> We are convinced the district court did not err in it refusal to submit the question of whether Knutson was a "mere continuation" of Knut Co. to the jury. The commonly accepted indicia point unmistakably to nonliability. Knutson was entitled to judgment as a matter of law. Accordingly, we affirm the judgement of the district court."

*Id.* at 202.

See also *Nelson v Pampered Beef-Midwest, Inc.*, 298 N.W. 2d 281 (Iowa 1980). There the Supreme Court stated that in order for a creditor to establish personal liability of a new corporation, there must be something more than a new corporation with the same membership. *Id* at 286-287, citing to *Allen v North Des Moines Methodist Episcopal Church,* 127 Iowa 96, 98-99, 102 N.W. 808, 809-10 (1905): "There must be more than a mere succession in business to charge the successor with the debts and delinquencies of the party succeeded.". Indeed there must be: (1) an agreement to assume such debts; (b) the circumstances must warrant a finding of a consolidation of the businesses; (3) the purchasing corporation must be a mere continuation of the selling corporation; or (4) the transaction must be

fraudulent. *Id* at 287 citing to *Luedecke v Des Moines Cabinet Co.,* 140 Iowa 223, 226 118 N.W. 456, 457 (1908).

Here HLF is shown in the evidence as an entity that was not sold, that HLF did not require HLFA to undertake its debts, that HLF received the funds paid from the *Swanny* case and that HLF was an active functioning law firm and continued to exist, even to the time of trial. (Tr. Vol. VII, p. 146; Tr. Vol X, p. 77). There 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, especially as it continues to exist and as it related to the Swanny case. Fees received by HLF in connection with the Swanny case were deposited in HLF's "operating [bank] account" and some or all of said funds remained in said bank account for some time thereafter. (Tr. Vol IX, pp. 14-15). The fact that employees went to HLFA and began to be paid from that law firm, and bills were and are paid by HLFA only shows the new law firm was and is conducting business with employees and was paying those employees and bills. It does not show that HLFA took over the rights and obligations of HLF. The above cited cases make it clear an owner of a law firm, indeed any business, can create a new company for the purpose of conducting future business without a determination that the new law firm is a successor to the old law firm as to all debts and liabilities. Nothing Larew argues or provides changes that proposition. The

District Court's determination that HLFA is not a mere continuation of HLF should be affirmed.

## II. THE DISTRICT COURT DID NOT FAIL TO DETERMINE THE TERMS OF THE IMPLIED-IN-FACT CONTRACT AND WHEN IT WAS BREACHED BUT DID ERR IN FAILING TO APPLY THE OCA TERMS OF COMPENSATION.

### *A. Standard of Review and Error Preservation.*

Defendants agree that issue was preserved in the parties Proposed Findings of Fact and Conclusions at Law and Motions to Enlarge Findings and Amend and was tried as a law action. See Issue I for the same standard of review.

### *B. The Metes and Bounds of the Implied Agreement do not need to be Determined to Identify when the Breach occurred.*

Here the District Court found there was the only one express contract, the June, 2011 OCA. (App. One, p. 175, App. One, p. 798-801). The relationship soured and Larew requested to no longer be shown as Of-Counsel in December 2012. (App. One, p. 1038). The District Court found this written agreement was formally terminated in May, 2013. (App One, p. 169, (App. Two, p. p.615). As noted below, it is the legal effect of factual finding that is presented to this Court.

The District Court factually found a new contract was not agreed upon by the parties. (App. One, p. 175). That finding by the District Court has substantial support, e.g. the last email of HLF wherein it is specifically asserted that no agreement had been reached and the terms of the Of-counsel agreement continued

to control division of the fees and expenses in the *Swanny* Case. (App. Two, p. 621-622; (See also App. One, p. 1132-1133, p. 1037-1038, p. 1044).

The District Court went on to determine that if a contract is terminated and a new one is not agreed upon by the parties, quantum meruit would apply. (App. One, p. 176). The legal issue for this Court on appeal is to determine if that legal conclusion by the District Court is correct or if the legal position of HLF is correct that the terms of the previous contract continue until a new one applies, as the propositions apply to determination of legal fees where the attorney fee contract with the client remains in effect with the old firm.

First, the Supreme Court has already clearly determined that as to all legal work completed before the of-counsel agreement was terminated, the split of attorneys' fees remains the same. See, e.g. *Phil Watson, P.C. v Peterson,* 650 N.W.2d 562 (Iowa 2002). In the *Watson* case an associate had left a law firm, entered into new fee agreements with the clients, and continued the cases to conclusion. The Iowa Supreme Court in *Watson* determined under those circumstances, that quantum meruit would apply. *Id* at 567-8. Yet in applying that calculation, the Supreme Court determined that the law firm was entitled to the moneys for the value of time prior to the termination of the law firm *Id* at 567. The quantum meruit concept applied to calculate the value of the work performed before and after the institution of the new attorney fee contract with the client. *Id* at 568.

The current case presents a different set of facts. Here Larew, the attorney who left the firm where the attorney fee contract existed, chose not to inform the client of the change in status and did not enter into a new attorney fee contract with the client. (App. One, p. 923). 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. Indeed, the Court will note from the arguments presented, Larew insists his quantum meruit right to his services go back to the very beginning of the attorney fee contract of HLF with the client, disregarding the terms of the OCA under which he operated and that he never has an attorney fee contract with the client. There is nothing in Iowa law to support this position.

The District Court attempted to apply the concepts the Supreme Court developed in *Watson*. (App. One, p. 176-177). The issues of application of quantum meruit will be discussed in the next section of this brief. For now, the legal proposition is: Can an attorney cease employment as Of Counsel, or even as an associate or as a partner, in a law firm, not enter into a new attorney contract with the client, continue to operate under the terms of the attorney fee contract of the old law firm, and then claim to be entitled to implied contract/quantum meruit calculations for fees rather than the compensation set under the Of-counsel/employment contract with the old law firm?

The Supreme Court in *Watson* gives some guidance on this issue. In *Watson*, the law firm contended it was entitled to recover the fees the law firm would have recovered if the clients had not left the firm, less Peterson's salary and expenses. *Id.* at 567. The Supreme Court stated that the reason this calculation of fees did not apply was because the attorney fee contract of the law firm had been terminated. *Id.* at 567. It had been terminated because Peterson had gone to the client and obtained a new attorney fee contract. *Id.* at 567. The attorney client relationship between the clients and the law firm had been terminated, when the clients made their election to follow Peterson. *Id.* at 567. As such, the implied contract for allocation of attorney fees earned applied the doctrine of quantum meruit. *Id.* at 568.

As noted previously, HLF has always had the one and only attorney fee contract, as amended, with the client. (App. One, p. 802-805, p. 811-816). Larew has never had an attorney fee contract with the client. (App. One, p. 923). Attorney fees were paid by the client under the HLF attorney fee contract, as amended. (App. One, p. 811-816, App. Two, p. 648-651). Larew performed all services for the Swanny clients under the HLF attorney fee contract with the Swanny clients. (App. One, p. 923, p. 1039, p. 1132). HLF has asserted that its obligations to Larew for amounts to be paid are controlled by the OCA as all services were rendered under the attorney fee contract of HLF. HLF has asserted that the OCA continued to control the amount of monies that HLF would owe to Larew. When that OCA was

terminated, it ceased all future business, but remained controlling for the cases wherein a new arrangement for payment of monies was not reached with Larew or with the client. This complies with the concepts developed by the Supreme Court in *Watson.*

Applying the concepts here urged by HLF, keeps in place the Supreme Court's concerns that a client is entitled to have whatever attorney it desires for a case; that clients will have in effect attorney fee agreements with the attorneys who have the legal rights to the monies earned under the contract and the legal obligations to the client; that fee disputes among attorneys will be kept to a minimum as they are obligated to reach agreement or have the client resolve the issues. The District Court erred in failing to determine that the failure of Larew to establish a new attorney fee contract, left in effect the OCA terms of compensation. Here HLF received $330,893.82 in fees. Using 40% under the OCA as Larew's percentage for payment for his services, yields the sum of $132,357.53. This is the sum this Court should modify the District Court's judgment and hold is the correct amount of judgment for Larew against HLF.

## III. IF QUANTUM MERUIT APPLIES THEN THE DISTRICT COURT IMPROPERLY CALCULATED QUANTUM MERUIT OWED.

### *A. Standard of Review and Error Preservation.*

Defendants agree that issue was preserved in the parties Proposed Findings of Fact and Conclusions at Law and Motions to Enlarge Findings and Amend and was

tried as a law action. See Issue I for the same standard of review which is at law, not de novo.

### *B. The District Court Improperly Calculated Quantum Meruit By Not Properly Considering the Factors.*

In the present case, the attorney fee contract with the Swanny client always remained with HLF. (App. One, p. 802-805, p. 811-816). There was no termination of the contingent fee agreement HLF had with the Swanny client. Larew never established an attorney fee contract with the Swanny client. (App One, p. 1038, p. 1132, p. 923). Accordingly, when the contingent fee contract completed with the Swanny client, HLF (including the services of Larew), Lucas Wilson and Sauro & Bergstrom were paid per that contract, as amended. (App. One, p. 811-816, p. 820-825, App. Two, p. 649). The written and completed contingent fee contract, as amended, establishes the upper most limit of the quantum meruit value of any and all attorney services rendered to the Swanny client. Larew, like HLF, Lucas Wilson and Sauro & Bergstrom, is limited and bound in absolute amount, by that upper limit of the value of all of the legal services rendered to the Swanny client in the Swanny litigation.

In *Phil Watson, P.C. v. Peterson*, 650 N.W.2d 562, 566-567 (Iowa 2002), the former associate took cases with him and was determined by the Court to be obligated to pay to the former law firm the quantum meruit value of the services the law firm had rendered to the client before the termination of the law firm by the

client. The present case differs in that Larew only partially took the client with him and continued to perform services but did not enter into a separate and new attorney fee contract with the client. The services rendered before Larew was terminated from the case by the client, were without dispute performed under the HLF attorney fee contract. The clients testified they always believed all services performed by Larew were as a part of the services of HLF. (App. One, p. 923, CA Dep pp. 76). Then, the client did not terminate HLF, but rather terminated Larew from the case. (App. One, p. 848, CA Dep. pp. 71-76). Under *Watson,* the fair value of the services rendered to HLF by Larew, therefore, need to be compared as follows: (1) the value of HLF services (including the services of Larew) during the existence of the OCA; (2) the value of services of HLF (including the services of Larew) after termination of the OCA and before the client termination of Larew; and (3) the value of HLF services after the termination of Larew by the client. The value of those services are to be limited by the overall contract amount actually paid by the client to HLF. *Watson* at 567.

As to this a client must, of course, agree to the division of fees among the attorneys who provide services. Here, the Swanny client agreed that the fee division between the attorneys should be (App. Two, p. 649):

| | |
|---|---|
| Sauro and Bergstrom | $166,062.17 |
| Hope Law and Larew Law | $388,421.02 |

| | |
|---|---|
| Wilson Law | $129,000.00 |
| Total | $683,483.19 |

When reduced by the amounts HLF otherwise paid out of those attorney fees, (i.e. Cost for Advanced fees to S&B $40,000.00 and Cost for advanced fees to George Warner $17,527.20), the final sum of net attorney fees earned by HLF was $330,893.82. (App. One, p. 821, p. 818). This, then, is the fee to be considered in a calculation between HLF and Larew if an implied contract/quantum merit analysis is to be applied.

In general, Larew argues that this entitles him to receive his services determined by the hourly fees he worked on the case both before and after the termination of the OCA as well as after his termination on the case. This ignores several very important aspects.

(1) For an undisputed period of time, from December 22, 2011 to May 21, 2013, the OCA was in full force and applied, even though it was terminated on May 21, 2013. Under *Watson* for the amount of fee attributable to the work prior to May 21, 2013, the OCA supplies the fee division; i.e. 60% to HLF and 40% to Larew.

(2) For the amount of the fee attributable to the work of HLF and Larew between May 21, 2013 and November 5, 2013, (the time between the termination of the OCA and the termination of Larew by the client) the

fee must be considered as to the changed circumstances. Larew argues it should be based upon his hourly rate and that he should get all credit for all hours spent during that time. HLF argues that no change should occur from the 60/40 split as the case continued to be processed under the HLF attorney fee contract with the Swanny client.

As to this, HLF contends the hourly rate of Larew and his associate as submitted cannot realistically be used. The overall fee is based upon a contingency and does not result in the actual HLF recovery. Further, Larew does not get all credit for all of his hours as he failed to accord the client the right to choose a lawyer different from HLF or enter into a new attorney fee contract. Rather, as far as the client was concerned, all service worked for the client from May 21, 2013 to November 5, 2013, were performed by HLF. (App. One, p. 923). Further, HLF remained liable on and for the contract and for the legal and ethical processing of the case.

The appropriate split of the portion attributable to this time frame should be divided 60% to HLF and 40% to Larew. This is fair and equitable as Larew chose to deprive the client of the client's choice and knew that HLF was proceeding to allow him to remain in the case and performing the work without addressing the issue with the client, as HLF believed the OCA terms applied. (App. One, p. 923-924, p. 1132-1133, p. 1038, p. App. Two p. 622). 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 client's interests have been affected by the attorneys. Simply stated, attorneys, if they want to obtain a different division of fees or compensation under an agreement with a client, need to address that with the client, or the fee division and compensation between attorneys will not be changed. Larew cannot chose to not discuss a changed arrangement between the attorneys with the client, choose to not reach agreement with the attorney firm who has the client fee arrangement and then later claim he has a right to almost all of the fee generated. The conduct of Larew is corrosive to the protection of the client's rights and corrosive of the rights of the attorneys who have an existing fee agreement with the client. Larew's position also exposed HLF to ongoing unspecified legal and ethical responsibilities, and now Larew asserts HLF should not be paid for those ongoing obligations. The continued fee division of 60% to HLF and 40% to Larew should be the "fair value" of the services provided by Larew to HLF for the client services under the circumstances of this case.

(3) Next must be the fair value of the services from November 5, 2013, to the conclusion of the case on June 16, 2016. It is undisputed that during that time period, the great majority of services were performed by S&B. S&B worked up and took to hearing the claim for bad faith; argued and defeated motions for judgment NOV; argued and defeated motions to new trial;

urged and obtained awards for prejudgment interest, post judgment interest and court awarded expenses and defended the appeal of the judgment obtained. (App. One, p. 860-868; p. 869-883, p. 884-891; Tr. Vol III, Pp. 62-64; 69-71; 12-121). Further S&B was called up to defend the client in the attorney lien applications of Larew. (Tr. Vol III, Pp. 86-87).

HLF performed services in remaining as attorney, advancing substantial out of pocket costs, advancing payment of $40,000 in hourly fees to S&B. (App. One, p. 824). Further HLF retained and paid for the services of an attorney to work to defeat the claim of Larew against the client for an award of attorney fee lien against the client's judgment. (App. One, p. 823).

Larew performed very limited services after his termination from the case by the client. On balance, the benefit of those services was outweighed by the detriment from the attempts to assert a direct attorney fee lien against the client. The value of HLF/Larew services after November 5, 2013 should all be awarded, on balance, to HLF.

Larew asserts he should be awarded $873,839. Yet, HLF provided Larew to its client. HLF became entitled to 60% of the fees Larew generated on the case by the efforts of Larew. HLF is entitled to credit for that. Yet, at all times Larew has claimed for himself credit for that work and time. That would be like a law firm

who assigned an associate to handle the case, and with the associate leaving the firm and claiming all the time work was the associates time, not the law firm's time. That would be neither right nor fair.

HLF then supplied administrative support for the case. HLF deserves credit for that. HLF stepped in when the local attorney suggested that another attorney should be brought in to work the post-trial and appeal matters. Yet, the Swanny client was pleased and happy with the choice to bring in S&B. The testimony of Mrs. Anderson and Michael Anderson, make it clear they wanted S&B involved. (App. p. 892-894, CA Dep. Tr. Pp. 93; MA dep. Tr. Pp. 22-23, 25, 30). When Larew presented the issue to the client, S&B or Larew to process the post-trial and appeal issues, the client chose S&B, along with HLF and Lucas Wilson. (App. One, p. 839, 845, 848). Larew asks this Court to hold it fair to the attorneys in this case to give him money for services provided after his termination by the client when Larew was not the one who provided the services. See Affidavit of Catherine Anderson, the client, on this issue. (App. One, p. 923-925). Larew stands as a universe of one in making his assertions in the Minn. lien proceedings and in this case.

Larew's position has been, and remains, unreasonable. Larew's hourly fee is not the reasonable value of his services to HLF on this case. All of the other attorneys provided valuable services for the Swanny client. This Court should find and conclude that the District Court improperly applied the elements and law of

quantum meruit when the attorney fee contract remains in effect with the original law firm. The OCA set out a split of 60/40 for the services of Larew. Larew and HLF should receive the benefit of that contractual arrangement. The amount of attorney fees HLF received, initially, is the sum of $388,421.02. (App. One, p. 826-830). As HLF expended the sums for Cost for Advanced fees to S&B in the amount of $40,000.00 (App. One, p. 824) and the Cost for advanced fees to George Warner $17,527.20 to defend the attorney fee liens filed by Larew (App. One, p. 823), the sum of $330,893.82 was the net attorney fees received by HLF. (App. One, p. 821). The sum of $132,357.53 (40% of $330,893.82) is the reasonable value of the services Larew rendered for HLF in doing work for the Swanny client. (App. One, p. 826-830, Tr. Vol VII, pp. 151-157). The judgment award entered by the District Court against HLF should be modified to so provide.

## IV. THE DISTRICT COURT DID NOT ERR IN FAILING TO AFFIRM EVIDENCE OF CONVERSION AND CONSPIRACY.

### *A.* *Standard of Review and Error of Preservation.*

Defendants agree that this issue was preserved in the parties Proposed Findings of Fact and Conclusions at Law and Motions to Enlarge Findings and Amend and tried as a law action. See Issue I for the same standard of Review as the other issues in this appeal which was tried at law.

### *B.* *HLF did not convert Funds owed to Larew.*

Larew sought judgment against Hope Law Firm, Hope Law Firm & Associates, Andrew L. Hope and Travis J. Burk on the legal theory of conversion. The District Court held no conversion was shown. (App. One, p. 178).

"Conversion is the act of wrongful control or dominion over chattels in derogation of another's possessory right thereof. *Jensma v. Allen,* 248 Iowa 556, 562, 81 N.W 2d 476, 480 (1957). "In order to establish a conversion claim, the plaintiff must establish a possessory interest in the property. *See Kendall/Hunt Publ'g Co., v. Rowe,* 424 N.W. 2d 235, 247 (Iowa 1988). Larew has not shown he had a possessory right in any of the attorney fees nor that he was ever entitled to $873,839.

Prior to this specific lawsuit, Larew attempted to prove a possessory interest in the fees in Minnesota. The Court in Minnesota twice held he did not have a right to a lien. (App. p. 1044, 1132). Larew's right was determined to be a contract right to a disputed payment of monies under an OCA terms with HLF. (App. One, p. 1044, 1132-1133).

The June 2011 OCA provides in paragraph 2.1 that "Compensation" of Larew is 40% of the net fees collected on cases litigated by Larew. (App. One, p. 799). Further, the June 2011 **OCA states in paragraph 4.3 that "all fee and compensation received or realized as a result of the rendition of professional serves by [Larew] shall belong to and be paid to [HLF].** (App. One, p. 800).

Larew does not, and never did have, a possessory right to the monies and is only entitled a contract right to be paid a sum equal to 40% of the net fees HLF collects.

Larew has contended that the contract right to be paid ripened into a possessory right because of a case division agreement with HLF and due to the distribution sheet between attorneys and the Swanny client wherein a portion of the fees were allocated to "Hope Law/Larew Law." The District Court correctly determined that there was no case division agreement as to the Swanny case. (App. One, p. 175). Further, the mere reference to Larew on the distribution sheet does not establish a "possessory" right. At most it refers to an acknowledgement by the client and the attorneys that the HLF particular segment of fees, as related to the client, was to be considered to pay in full all fees due from the client to "Hope/Larew." Team under the HLF contract. The distribution thereafter made by the Minnesota firm of S&B of the fee division reflected the reality that only the attorneys with the written fee agreement with the client had a possessory right in the attorney fees paid by the client. That is why the S&B law firm in Minnesota issued the checks to the "Hope Law Firm." (App. One, p 817-819). The Minn. Court had previously held that HLF was the entity to whom the monies were due and owing under the fee agreement. (App. One, p. 1132). That gave HLF the possessory right to those fees. While the amount to be paid to Larew has been disputed, the existence of that right to receive a contractual agreed payment under the OCA is not equivalent to the

creation of a "possessory" right in the funds received from the client under the attorney fee agreement. Rather, it is merely a contractual right to be paid some amount under a separate contract.

The Minnesota Court likened the position of Larew to an associate. (App. One, p. 1045). Associates do not personally own cases or have a right to be paid fees by a client who has signed a fee agreement with the employing law firm. Rather, the associate is employed to handle the cases the employing law firm assigns, requires or allows the associate to work on while employed at the law firm. The associate is entitled to receive payment of the monies agreed upon with the employing law firm. Some are paid a salary; others a salary plus commission bonus; others on straight commission bonus. Whichever method of payment is chosen, the attorney fees earned on firm fee contracts belong to the law firm, not to the associate. The law firm is entitled to, and in possession of, all fees paid on that firm fee contract. The associate who is to receive payment based on or bonused on those fees generated, is then entitled to be paid monies by the employing law firm calculated on, but not from, these specific funds. Likewise, is Larew's claim in this case.

HLFA has never had control of the fees. Travis Burk is an employee and never had control over the money. Andrew Hope's control over the funds was an employee and he has never had possession of the funds received from the Swanny case. The control of the monies by all Defendants has never been wrongful. "No conversion

may be found where the exercise of control was not wrongful, as, for example, where the property was rightfully in the possession of the defendant." *Larson v. Great W. Cas. Co.,* 842 N.W. 2d 170, 173 (Iowa Ct. App. 1992).

The Swanny monies held by HLF did not include client funds and the monies should not have been deposited in the Trust Account. From its knowledge of the private practice of law in Iowa, the Court is aware that many lawyers agree to pay percentage bonus amounts to associates. These lawyers and law firms are not required to pay these bonus amounts of percentage amounts out of the client Trust Account or to hold the fees separate to pay the amounts under the service agreements. Further, HLF and Larew followed a practice of HLF obtaining the fees, placing the amounts in its operating account, and then paying the amount HLF that was appropriate to Larew. (App. Two, p. 918-942). This practice is in accord with the standard practice in Iowa and with the law. Larew never objected to this process. See e.g. *Larson v. Great W. Cas. Co.,* 482 N.W. 2d 170-173-74 (Iowa Ct. App. 1992) citing to *Williams v. Redigner,* 179 Iowa 615, 616, 161 N.W. 701, 702 (1917).

It is without dispute that (1) the fee agreement was always between HLF and the client; (2) that Larew never had a fee agreement with the client; (3) that Larew tried to get the client to agree to hire him as the attorney; (4) that the Minnesota Court held he had no interest in the fee with the client. This Court should likewise

reject the concept of conversion due to the lack of proof of possessory right and affirm the finding and conclusions of the District Court.

*C. Hope and Burk did not engage in a Conspiracy to convert Larew's fees.*

The District Court held that as to conspiracy that Larew failed to prove any of his tort claims against any of the Defendants. (App. One, p. 178-179). See *Wright v. Brooke Group, Ltd.,* 652 N.W. 2d 159, 172-74 (Iowa 2020). The extensive recitation of facts made by the District Court and set out in the statement of facts above, demonstrate the District Court, as finder of fact, was entitled to conclude no torts and no conspiracy was proven by Larew. (App. One, p. 178-179). Nothing Larew sets out effectively challenges this factual finding. The District Court findings and conclusions on this issue should be affirmed.

## V. THE DISTRICT COURT CORRECTLY HELD HOPE AND BURK WERE NOT INDIVIDUALLY LIABLE.

*A. Standard of Review and Preservation of Error.*

Defendants agree that this issue was preserved in the parties Proposed Findings of Fact and Conclusions at Law and Motions to Enlarge Findings and Amend and tried as a law action. See Issue I as to the same standard of Review, which was tried at law.

*B. Liability of Andrew Hope.*

Andrew Hope was acting as an agent for HLF, and there was "no substantial evidence supporting liability on the part of Andrew Hope individually." (App. p.

179). Hope acted to pursue what he considered to be the lawful actions of HLF on an existing attorney fee contract that HLF and Larew left in existence with the Swanny client. There was no showing that Hope engaged in any tort in doing so. The District Court was correct and should be affirmed as no liability is shown as to Hope.

*C.* *Liability of Travis Burk.*

In this case, Larew cites to actions of Burk, but has proven virtually no conduct of Burk, other than that he was an employee acting for HLF and under the direction of Hope. The District Court factually found no wrongful conduct by Burk and no liability under a tort claim against Travis Burk. (App. One, p. 179). The District Court should be affirmed as to no liability for Burk.

## VI. THE DISTRICT COURT DID NOT ERR IN NOT AWARDING PUNITIVE DAMAGES.

*A.* *Standard of Review and Error of Preservation.*

Defendants agree that this issue was preserved in the parties Proposed Findings of Fact and Conclusions at Law and Motions to Enlarge Findings and Amend and tried as a law action. See Issue I as to the same standard of Review.

*B.* *Actual and Legal Malice do not Support Punitive Damages.*

Larew has made a claim for punitive damages. "Generally, a breach of contract, even if intentional, is insufficient to support a punitive damage award" *Magnusson Agency v. Public Entity Nat. Company – Midwest*, 560 N.W.2d 20, 31

(Iowa 1997). An award of punitive damages for breach of contract will only be upheld when the breach 1) constitutes an intentional tort and 2) is committed maliciously, in a manner that meets the standards of Iowa Code Section 668A.1 which requires proof, by a preponderance of clear, convincing, and satisfactory evidence, that the defendant's conduct amounted to a willful and wanton disregard for the rights or safety of another. As noted in the statement of facts and the previous arguments, Larew introduced no substantial evidence of the commission of any tort, let alone substantial evidence of any intentional tort, committed maliciously, as that term is defined in Section 668A.1. Consequently, Larew's claim for punitive damages was correctly found factually to be without merit and the District Court should be affirmed on this issue.

## VII. THE DISTRICT COURT ERRED WHEN FINDING HOPE LAW FIRM DID NOT PROVE LAREW INTERFERED WITH THE CONTRACT WITH THE SWANNY CLIENT.

HLF asserted that Larew intentionally interfered with its attorney fee contract with the Swanny client and that such interference contract caused the contract with Swanny to be more expensive to complete. The District Court determined there was no interference with contract. (App. One, p. 180). HLF contends the Trial Court erred as to this finding and this case should be remanded for a determination of the damages to HLF on this cause of action.

### *A. Standard of Review and Error of Preservation.*

This case was tried as an issue of law. See Issue I with the same standard of review as all other issues in this appeal. This issue was preserved by Defendants in the Defendant HLF's Proposed Findings of Fact and Conclusions at Law and Motions to Enlarge Findings and Amend.

*B.* *The Evidence Supported HLF's Claim of Interference with Contract.*

To prove this claim HLF is required to prove that (1) HLF had a contract with Swanny; (2) Larew knew of the contract HLF had with Swanny; (3) Larew both intentionally and improperly interfered with the contract HLF had with Swanny, and (4) that conduct of Larew made performance of the Swanny contract more burdensome or expensive for HLF to complete. See *Nesler v. Fisher & Co.,* 452 N.W.2d 191, 197-198 (Iowa 1990).

It is undisputed that Larew knew that HLF had an attorney fee contract with Swanny; that Larew knew that the Swanny client had terminated Larew's involvement in the processing of the case and selected the HLF, S&B and Lucas Wilson team. HLF asserted to the District Court that Larew knew and did the following to show intentional and improper conduct in interfering with its contract with Swanny:

a. Larew knew that HLF had consistently asserted it had the fee agreement with Swanny, it controlled who would be the attorney for Swanny under that agreement, that HLF would be paid for services in the Swanny case

and that if Larew wanted to change the arrangement, he needed to enter into his own fee agreement with the Swanny client and inform the client of the pre-existing and continuing rights of HLF to be paid for the services rendered in the case; if Larew continued in the case, Larew's portion of the fees would be controlled by the attorney fee contract HLF had with Swanny and the OCA. (App. Two. p. 621-622, p. 619)

b. Despite the knowledge of Larew as to the contract rights of HLF, Larew did not advise the client of his contention of any changed relationship or terms. (App. One, p. 923). Rather he continued as if nothing had changed. This led HLF and Swanny to understand the issues remained unchanged as to this case. (App. One, p. 923-924; Tr. Vol. IX, pp. 34-36). He later apologized to the client for this misrepresentation failure and stated he knew it was as mistake. (App. One, p. 924). Yet, he has since that time, including in this appeal, attempted to deprive HLF of all, or virtually all, of its earned fees for the work for Swanny.

c. Prior to any judgment being obtained for Swanny, and without prior notice to HLF or the Swanny client, Larew filed an attorney lien in Minnesota against the potential judgment. (App. One, p. 1033-1047). This request for lien asserted an express agreement with Swanny to be paid attorney fees. (App. One, p. 1033-1047). Yet, Larew knew he had no express agreement

with Swanny to be directly paid attorney fees. (App, One, p. 1043). Yet Larew knew that during the entire time Larew provided services to Swanny, the Swanny client had never been told he was operating in any way other than under the attorney fee agreement HLF had with Swanny. (App. One, p. 1041, p. 1132, p. 923-924).

d. This first attempt to obtain an attorney fee lien in Minn. sought recovery of a direct lien against the judgment obtained and the client and to require the payment of monies obtained in the case directly to Larew. (App. One p. 1041, 896). This is a direct attempt to interfere with the attorney client relationship HLF had with Swanny.

e. The First attorney fee lien filed by Larew also initially sought the sum of over $873,000. (App. One, p. 923-924; 903). That amount was demanded in March 2016 and is sought under a claim in this case that the sum is a calculation of "quantum meruit" or reasonable value of fees. (App. Two, p. 183, 199). Yet, there had never been a time when the reasonable value of fees in this case has any basis of being the value of attorney fees in this case. Larew has never had the right to make a claim for that amount of fees in this case.

f. As a result of these unreasonable attempts to circumvent the existing attorney fee contract rights of HLF through this attempted attorney lien in

> Minn. HLF had no alternative but to retain counsel in Minn. to intervene and appear in the lien proceedings in Minn. and to file briefs and argue against the positions advocated by Larew against the Swanny client and the HLF. (App. One, p. 823).

These facts undeniably establish and show that Larew intentionally did not tell the client because he wanted to remain the attorney on the case; Larew misled HLF and the Swanny client into believing that Larew was operating as part of HLF in the processing of the case. Yet Larew harbored the intent to disavow HLF interest and to take virtually all of the fees to be awarded in the case, if he was successful in winning the case. His inappropriate intent and actions were thwarted when Lucas Wilson, quite independently, met with HLF and expressed a desire to have additional counsel for appeal and that was pursued. (Tr. Vol. VII, pp. 112-117; 120). Larew then asserted to the client that he would take over the case and have HLF terminated. The Swanny client, perhaps due to Larew's own failure to be candid and truthful with the client, determined to terminate Larew and not HLF. (App. One, p. 848). Larew, undaunted, then devised a way to sue directly on the judgment, for an attorney lien, thereby attempting to circumvent the HLF claim and take all, or almost all, of the fees and denied any obligations on the prior OCA agreements with HLF. (1033-1047). When that attempt was denied by the Minn. Court, Larew filed a second lien attempt to accomplish the same result—with a denial of fees to Lucas

Wilson and HLF. (App. One, p. 1126-1134). That attempt was refused by the Minn. Court. (App. One, p.1134). Larew, again undaunted, on March 6, 2016, just before the attorney fees were to be paid in the case as the case was coming to a conclusion, sent a demand to HLF making an exceedingly unreasonably large demand for payment, coupled with a demand all of the money be held in a trust condition until the disputes could be resolved. (App. p. 184-188).

The above demonstrates the elements of Larew intentionally interfering with the attorney fee contract HLF had with the Swanny client. HLF established all elements to show an intentional interference with contract by Larew and the District Court erred against all of the substantial evidence in finding otherwise. This finding and conclusion by the District Court should be reversed and this issue remanded for a determination of the damages to be awarded.

## VIII. CONCLUSION

Defendants respectfully request that: (1) the District Court's determination on non-liability for HLFA as a successor entity be affirmed; (2) The District Court's determination of the amount of money owed by HLF to Larew be modified to the sum of $132,357.53; (3) The District Court's determination of finding of no conversion, no conspiracy and no quantum meruit recovery against Defendants HLFA, Andrew Hope and Travis Burk be affirmed; (4) the District Court's determination of no punitive damages against any Defendant be affirmed; and (5)

that Larew be determined to be liable for interference with contract with this matter remanded for determination of the compensatory and punitive damages to be awarded.

## REQUEST FOR ORAL ARGUMENT

Defendants respectfully request oral argument.

## CERTIFICATE OF COST

The undersigned attorney does hereby certify that the actual cost of producing the foregoing Appellant's Proof Brief and Request for Oral Argument was $0.00.

Respectfully submitted,

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## CERTIFICATE OF FILING/SERVICE

I hereby certify that on the 25th day of October, 2021, I electronically filed the foregoing Proof Brief 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), 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 face requirements and type volume limitation of Iowa Rs. App. P. 6-903(1) and 6.903(g)(1) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 13807words, excluding the parts of the brief exempted by Iowa R. App. p. 6.903(1)(g)(1).

By: *Bruce H. Stoltze*