

# Order

Michigan Supreme Court  
Lansing, Michigan

March 6, 2026

Megan K. Cavanagh,  
Chief Justice

169061

Brian K. Zahra  
Richard H. Bernstein  
Elizabeth M. Welch  
Kyra H. Bolden  
Kimberly A. Thomas  
Noah P. Hood,  
Justices

NICK MERRIFIELD and MERRIFIELD  
MACHINERY SOLUTIONS,  
Plaintiffs-Appellants,

v

SC: 169061  
COA: 368355  
Oakland CC: 2021-191816-NM

ATS ADVISORS, JAMES SULLIVAN, and  
SHANE RANDELL,  
Defendants-Appellees.

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On order of the Court, the application for leave to appeal the August 12, 2025 judgment of the Court of Appeals is considered. Pursuant to MCR 7.305(I)(1), in lieu of granting leave to appeal, we REVERSE in part the judgment of the Court of Appeals and REMAND this case to the Oakland Circuit Court for further proceedings.

The Court of Appeals held that plaintiffs' claim for attorney fees as damages for defendants' alleged accounting malpractice was properly dismissed. The Court of Appeals based its holding on the "American rule," which Michigan typically follows and which provides that "attorney fees are not ordinarily recoverable [as an element of costs or damages] unless a statute, court rule, or common-law exception provides the contrary." *Dessart v Burak*, 470 Mich 37, 42 (2004), quoting *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16, 37-38 (1998). Despite acknowledging this Court's recent opinion in *Hark Orchids, LP v Buie*, \_\_\_ Mich \_\_\_ (December 30, 2024) (Docket No. 165761), the Court of Appeals held that it was not applicable, concluding that *Hark Orchids* was limited only to claims for attorney fees as damages for *legal* malpractice and declining to apply it to claims for attorney fees as damages for *accounting* malpractice as well. *Merrifield v ATS Advisors*, unpublished per curiam opinion of the Court of Appeals, issued August 12, 2025 (Docket No. 368355), p 7 n 2.

Our decision in *Hark Orchids* is not so limited. Rather, this Court explained that "[a]ttorney fees incurred to correct or limit the damages caused by malpractice are inherent in the underlying injury in malpractice suits." *Hark Orchids*, \_\_\_ Mich at \_\_\_; slip op at 7. Although the opinion specifically held that "[p]ermitt[ing] aggrieved clients to recover attorney fees that are caused by legal malpractice and are reasonably and necessarily incurred to mitigate the harm of the malpractice is consistent with the nature of malpractice relief—to make the clients whole," *id.* at \_\_\_; slip op at 11, the same principles hold true for accounting malpractice. Indeed, as the opinion states:

Notably, the result in this case is by no means unusual in the context of malpractice generally. When a doctor commits medical malpractice, the patient is entitled to recover the costs of hiring another medical professional to mitigate the harm and repair the injuries caused by the malpractice. The same is true for negligence actions involving engineers, *accountants*, professional home construction contractors, and others.<sup>40</sup>

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<sup>40</sup> . . . *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322, 333; 535 NW2d 187 (1995) (explaining that accounting malpractice is largely governed by “common-law principles articulated in malpractice actions generally”); see also *Alt v Konkle*, 237 Mich 264, 269; 211 NW 661 (1927) (“A plaintiff in a negligence case is entitled to recover, as a part of his damages, his reasonable and necessary outlays in an attempt to be cured of the injuries resulting from the negligence of the defendant.”) (quotation marks and citation omitted).

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[*Hark Orchids*, \_\_\_ Mich at \_\_\_, \_\_\_ n 40; slip op at 16-17, 17 n 40 (emphasis added).]

The Court of Appeals erred in holding that the legal principles animating our opinion in *Hark Orchids* were strictly limited to legal malpractice claims. As stated in *Hark Orchids*, we hold that plaintiffs’ claim for attorney fees simply “does not implicate the American rule.” *Id.* at \_\_\_; slip op at 22. We note, however, that as cautioned in *Hark Orchids*, “the client cannot recover *any and all* fees that the client incurred in attempted mitigation. Attorney fees subject to recovery must be *reasonable and necessary* to mitigate the harm from malpractice.” *Id.* at \_\_\_; slip op at 21.

Because we hold that the Court of Appeals erred in holding that the American rule barred plaintiffs’ claim for attorney fees, we remand this case to the trial court for further proceedings consistent with this order.

We do not retain jurisdiction.



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I, Elizabeth Kingston-Miller, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 6, 2026

*Elizabeth Kingston-Miller*  
Clerk