

RECEIVED

Feb 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Cristi F. Curtis, Circuit Court Judge

Appellate Case No. 2019-001169

Aracelis Santos, Appellant,

v.

Harris Investment Holdings, LLC, Respondent.

**RESPONDENT’S REPLY IN SUPPORT OF MOTION FOR AWARD OF ATTORNEY’S
FEES AND COSTS**

Harris Investment Holdings, LLC (“HIH”) submits this Reply in support of its motion filed on February 9, 2023, requesting an award of its attorney’s fees and costs incurred in connection with this appeal.

In her Return, Appellant Aracelis Santos (“Santos”) made two arguments why she contends HIH’s motion should be denied. She argues that the only fees and costs recoverable on appeal are those specified in Rule 222, SCACR, and that HIH’s motion is premature. Both of these arguments fail.

I. HIH is not limited to the fees and costs specified in Rule 222.

South Carolina appellate courts have repeatedly held that Rule 222 does not preempt an award of attorney’s fees to which one is “otherwise entitled” by statute or contract. *Taylor v. Medenica*, 332 S.C. 324, 504 S.E.2d 590 (1998) (awarding Respondents a \$1,000 attorneys’ fee and \$81.66 for costs as allowed by Rule 222 and holding that Respondents could seek additional

attorneys' fees under the SCUTPA, which provides for reasonable attorneys' fees and costs); *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 416, 438 S.E.2d 248, 250 (1993) (finding Appellant waived right to recover appellate costs and fees under Rule 222 as he failed to file an itemized statement of costs prior to the Court's issuance of the remittitur, but holding that Appellant could seek appellate costs based on his statutory right under section 29-5-10 (authorizing costs incurred for the enforcement of a mechanic's lien) as "Rule 222 does not preempt an award of attorney's fees to which one is otherwise entitled" (citation omitted)); *McDowell v. S.C. Dep't of Soc. Servs.*, 304 S.C. 539, 543, 405 S.E.2d 830, 833 (1991) (holding that an award of attorney's fees under Supreme Court Rule 38 (precursor to Rule 222) did not "preempt an award of attorney's fees to which one is otherwise entitled" and, thus, Appellant could seek an award of attorney's fees pursuant to section 15-77-300, which permits an award of fees for a party prevailing in an action against a state agency). Because HHH is "otherwise entitled" to recover its attorneys' fees and costs pursuant to the terms of the subject leases—as this Court held in its opinion in this appeal—HHH is not limited to the amount of fees and costs set forth in Rule 222.

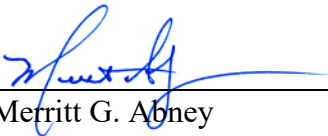
II. HHH's Motion is not premature.

Because HHH is "otherwise entitled" to recover its attorneys' fees and costs, the procedure specified by Rule 222, including the timing of a motion for recovery of costs, is not the exclusive means by which HHH may request a fee award. In any event, Rule 222 merely establishes a deadline by which the motion must be made—"within fifteen (15) days of the issuance of the remittitur." The Rule does not prohibit an earlier filing.

CONCLUSION

For all of the above reasons, Harris respectfully requests that the Court award it attorney's fees and costs as reflected in the invoices submitted by Nelson Mullins.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:  _____
Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
Olesya V. Bracey (SC Bar No. 101409)
E-Mail: olesya.bracey@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Respondent, Harris Investment Holdings, LLC

Charleston, South Carolina
February 17, 2023

RECEIVED

Feb 17 2023

SC Court of Appeals

PROOF OF SERVICE

I, the undersigned of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Harris Investment Holdings, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**REPLY IN SUPPORT OF RESPONDENT'S MOTION FOR
AWARD OF ATTORNEY'S FEES AND COSTS**

Counsel Served:

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
PO Box 71121
Charleston, SC 29415-1121

Attorneys for Appellant



Lauren Lynch
Paralegal Coordinator

February 17, 2023