

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Apr 10 2023

SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2017-CP-42-02072

Donald and Carlee Simmons, Respondents,

v.

Benson Hyundai, LLC, Appellant.

RESPONDENTS' SECOND MOTION FOR ATTORNEY'S FEES

Respondents move this Court as follows for attorney's fees
arising from Appellant's appeals.

I. INTRODUCTION

This is a auto-dealer fraud case. Respondents requested a jury trial. Appellant demanded that the case be arbitrated. However, the circuit judge agreed with Respondents and denied Appellant's request for an arbitration. The auto-dealership/Appellant appealed, and this Court affirmed the circuit judge.

Having prevailed in the appeal before this Court, Respondents now move for attorney's fees and costs to be taxed against Appellant. An *Itemized Statement of Costs* is attached as Exhibit A to this Motion.

II. ARGUMENT

South Carolina Rule of Appellate Procedure 222(a) provides

that attorney's fees and costs shall be taxed against the Appellant when an appeal is dismissed. Respondents ask that this be done.

Respondents also bring to the Court's attention that Benson itself has pursued attorney's fees, costs, punitive damages, and prejudgment interest against the Simmonses in Appellant's Arbitration Complaint.¹

III. AUTHORITIES

(A) S.C. App. Ct. R. 222(a)

(B) S.C. App. Ct. R. 240

(C) Re: Attorney's Fees under Rules 222 and 242 of the South Carolina Appellate Court Rules, S.C. Sup. Ct. Order dated January 17, 2018. ("The attorney's fee under Rule 222(b) of the South Carolina Appellate Court Rules is hereby increased to \$2,500. This increased fee shall apply to any appeal where a decision is filed on or after the date of this order which gives rise to the right to seek costs under Rule 222.")

(D) Record on Appeal at p.30.

IV. CONCLUSION

Respondents have traveled to Spartanburg for a motion hearing and to Columbia to argue before the Court of Appeals. They have incurred significant costs for a young married couple. Respondents have yet to move past this initial stage and get into discovery. Thus, reimbursement for attorney's fees and costs are not unreasonable in this consumer case.

Respondents request that \$2,500.00 in attorney's fees be awarded to them as the prevailing parties before the Court of Appeals, if permissible under court rules, and an additional \$2,500 for attorney's fees as the prevailing party in defense of Motion for a Writ of Certiorari before the South Carolina Supreme Court.

————— SIGNATURE PAGE TO FOLLOW —————

¹ Record on Appeal at p. 70 (Appellant's Complaint in Arbitration).

S/Warren Moise
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South Carolina Bar Number 11848
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ATTORNEYS FOR THE RESPONDENTS

Dated: April 10, 2023

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ITEMIZED STATEMENT OF COSTS
THE STATE OF SOUTH CAROLINA **Apr 10 2023**
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The Appellate Court is requested to tax the following
attorney's fee against

Appellant

(Name of Party)

COSTS TAXABLE UNDER RULE 222, SCACR	NO. OF PAGES	RATE	REQUESTED	ALLOWED (For Court Use Only)
Cost of Printing or Copying Final Brief				
Cost of Printing or Copying Final Reply Brief				

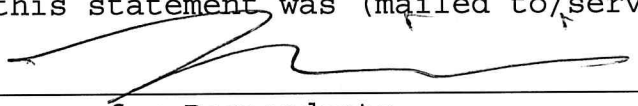
Cost of Printing or Copying Record on Appeal				
Filing Fee Paid Under Rule 203(d), SCACR				
Cost of Court Reporter's Transcript				
Attorney's Fee Provided By Rule 222(b), SCACR		\$350.00 per hour	\$2,500.00 ¹ (A portion of itemized attorney time is attached as Exhibit B)	
Other (specify and explain):				

COSTS TAXABLE UNDER RULE 242(j), SCACR				
Cost of Printing or Copying Brief				

¹Though the attorney's fees are over \$2,500, I understand that we may not recover more than that amount. The additional hours are just to show the total work done by Respondents.

Cost of Printing or Copying Reply Brief				
Cost of Printing or Copying Appendix				
Filing fee paid under Rule 242(c), SCACR				
Attorney's fee provided by Rule 242(j)(2), SCACR				
Other (specify and explain):				
		TOTAL		

I, E. Warren Moise, do swear or affirm that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was (mailed to/served upon) opposing counsel.



Attorney for Respondents

Subscribed and sworn to before me this 10th day of April, 2023.

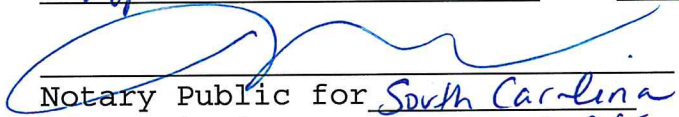

 Notary Public for South Carolina
 My Commission Expires: 11-9-28
 (Seal)



Exhibit B

Itemization of Attorney Work and Time

Date	Description	Time	Cost
2/28/2019	Reviewed Notice of Appeal with exhibits	0.30	\$105.00
3/5/2019	Reviewed correspondence from Defendant's attorney to court of appeals with notice of appeal, etc.	0.10	\$35.00
3/5/2019	Reviewed correspondence from Defendant's attorney to court of appeals regarding need case number	0.10	\$35.00
4/3/2019	E-mail from client with questions and replied	0.20	\$70.00
10/31/2019	Conference with clients last night; numerous emails regarding settlement; reviewed difficult question of damages; more emails with client	1.30	\$455.00
12/2/2019	Read damages, emails, notes, charts, and other claim information. Typed updated charts and email to clients (8:30 - 3:00)	7.00	\$2,450.00
12/4/2019	Telephone conference with Plaintiffs to go over damages	1.10	\$385.00
5/1/2020	Received and reviewed correspondence from Bradford Martin regarding settlement demand	0.10	\$35.00

Exhibit B

5/11/2020	Drafted letter to Donald and Carlee Simmons regarding additional checks and correspondence from Defendant's counsel	0.10	\$35.00
8/19/2021	Drafted correspondence to South Carolina Court of Appeals Email to the South Carolina	0.10	\$35.00
8/19/2021	Email and correspondence from Martin regarding Court of Appeal date	0.10	\$35.00
8/19/2021	Correspondence to Court of Appeal regarding oral arguments	0.30	\$105.00
8/19/2021	Email to Defendants	0.20	\$70.00
8/20/2021	Received and reviewed "received" copy of correspondence from Court of Appeals Clerk	0.10	\$35.00
9/28/2021	Email to and from Brad; to and from client	0.10	\$35.00
11/22/2021	Emails from and to the Defendant regarding misfiled page of Judge's Order	0.10	\$35.00
12/6/2021	Began reading voluminous file in preparation for appeal this week	4.00	\$1,400.00
12/7/2021	Continued working on appeal	6.00	\$2,100.00
12/8/2021	Completed work on oral argument and drove to Columbia	2.00	\$700.00
12/9/2021	Attended oral argument	3.00	\$1,050.00
TOTAL			\$9,205.00

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CERTIFICATE OF SERVICE

The undersigned does certify that Respondents' Motion for Attorney Fees was served on the below named parties and/or their respective counsel and/or agents by email and by depositing a true and accurate copy of the same in the U.S. mail, first class, properly addressed, with sufficient postage affixed, on the date below.

Bradford Neal Martin, Esquire
Laura Wilcox Howle Teer, Esquire
Bradford Neal Martin & Associates, P.A.
Post Office Box 10410
Greenville, SC 29601
ATTORNEYS FOR APPELLANT



Chyrra Greene
Legal Assistant to E. Warren Moise

Date: April 10, 2023