

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

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Case No. 2017-CP-42-2072  
Appellate Case No. 2019-000344

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Donald and Carlee Simmons ..... Respondents,

v.

Benson Hyundai, LLC ..... Appellant.

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**OBJECTION TO RESPONDENTS' SECOND  
MOTION FOR ATTORNEY'S FEES**

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Appellant objects to Respondents' second request to collect double the attorney's fees allowed in their Second Motion for Attorney's Fees under Rules 222, 240, and 242(j) of the SCACR, as follows:

Appellate Rule 222(e), SCACR provides, in pertinent part:

If a petition for a writ of certiorari is sought under Rule 242, the Court of Appeals shall tax costs only in those cases in which the petition for writ of certiorari is denied. In all cases in which a writ of certiorari is granted, costs shall be awarded in the manner provided by Rule 242(j).

It is clear that costs are awarded under Rule 222, SCACR when a Writ of Certiorari is denied and under Rule 242, SCACR when the Writ is granted. Costs are not awarded under both Rules 222 and 242. This is reiterated by the heading for Rule 242(j), SCACR, "**Costs When a Writ of Certiorari Has Been Granted.**" (emphasis added).

Rule 222(b) provides:

...In addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court.

By Order dated January 17, 2018, the amount of attorney's fees was set at \$2,500.00. Therefore, Respondents are entitled to a single award of attorney's fees in the amount of \$2,500.

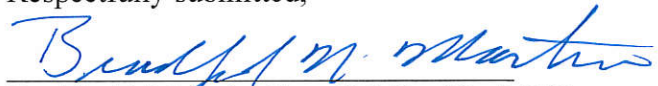
Additional costs are generally not allowed "except in the most extraordinary of circumstances." Rule 222(b). Respondents have not demonstrated "the most extraordinary of circumstances." The appeal in this case has proceeded in an ordinary manner regarding the lower court's order denying Appellant's Motion to Compel Arbitration. Respondents' decision to attend a single hearing in the underlying case or the arguments before the Court of Appeals are certainly not the "most extraordinary of circumstances."

Costs incurred in the underlying case are not relevant to the issue of costs on appeal. The issuing of the Remittitur restores jurisdiction to the lower court, including as to awards of costs or attorney's fees to either party as the case proceeds, in accordance with any applicable statutes or rules of civil procedure.

Appellant therefore respectfully requests that Respondents' request to recover additional attorney's fees of \$2,500 under Rule 242(j) in addition to those recoverable under Rule 222(b) be denied.

April 11, 2023

Respectfully submitted,



Bradford N. Martin, Esq. (SC Bar No. 3658)

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**Apr 11 2023**

**SC Court of Appeals**

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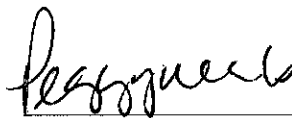
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**PROOF OF SERVICE**

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I certify that I have served Appellant’s Objection to Respondents’ Second Motion for Attorneys Fees by depositing a copy in the U.S. Mail, postage prepaid, on April 11, 2023, addressed to attorney of record, Warren Moise, Esq., Grimball and Cabaniss, LLC, 1180 Sam Rittenberg Boulevard, Suite 120, Charleston, SC 29417.

April 11, 2023



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