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**Apr 20 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

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Case No. 2020-CP-26-04144  
Appellate Case No. 2022-001606

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Ray Wallauer, Carol Wallauer, John White and Pam White..... Respondents

vs.

Accelerate Solar, LLC; Advantage Solar, LLC; Dividend Solar Finance, LLC;  
and Justin Pole, Defendants,

Of which Advantage Solar, LLC is..... Appellant

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**RESPONDENTS' REPLY TO APPELLANT'S RETURN  
TO RESPONDENTS' MOTION TO TAX COSTS**

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The Appellant now argues that the \$2,500.00 attorney's fee allowed by Rule 222(b), SCACR should not be applicable in this case. The Appellants argue that the Respondents' Memorandum arguing the appeal should be dismissed was limited and that it could not have taken more than 1-2 hours to research and write. The Appellant's argument, however, flies in the face of the January 17, 2018 Order of The Supreme Court of South Carolina. In that Order the Supreme Court stated:

The attorney's fee under Rule 222(b) of the South Carolina Appellate Court Rules is hereby increased to \$2,500.00. 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.

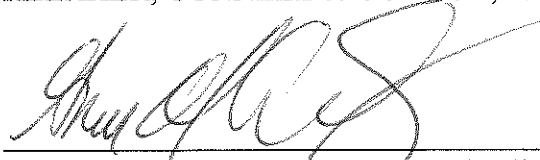
The Order of the Supreme Court mandates attorney's fees of \$2,500.00 for any appeal filed after January 17, 2018. It takes no exception for the number of hours worked on the appeal, the length of any memorandum or brief, or the fact that the appeal was dismissed by a motion. The Order states that the attorney's fee shall be \$2,500.00. Appellant asks this Court to ignore the Supreme Court's Order because according to Appellant, Respondent could not have expended more than 1-2 hours working on the Memorandum.

Appellant's argument is wrong for several reasons. First, Rule 222(a), SCACR states "...costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed." Thus, Respondents have an absolute right to costs and fees under South Carolina Appellate Rules.

Second, Appellant assumes that Respondents' counsel performed no services as to the appeal other than filing a Memorandum addressing the issue of appealability of the Order. In fact, the Notice of Appeal was filed on November 16, 2022. Since that date Respondents' counsel had already been working on the appeal considering and researching whether or not the order was interlocutory when this Court issued its letter on January 23, 2023 asking the parties to serve and file a memorandum addressing the appealability issue. Thus, Appellant's assumption as to the time spent by Respondents' counsel on this appeal is without merit.

In sum, Respondents request the Court tax Appellant consistent with Rule 222 and grant Respondents' attorney's fee request of \$2,500.00.

KELAHER, CONNELL & CONNOR, P.C.



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**Attorney for Respondents**

April 20, 2023  
Surfside Beach, South Carolina

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Of which Advantage Solar, LLC is..... Appellant

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**PROOF OF SERVICE**

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PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., and that she has served **Respondents' Reply to Appellant's Return to Respondents' Motion to Tax Costs** on the 20<sup>th</sup> day of April, 2023, by depositing a copy of same in the United States Mail, postage prepaid, to:

Joseph O. Smith, Esquire  
Joshua J. Hudson, Esquire  
Smith Hudson Law, LLC  
200 N. Main St., Suite 301-C  
Greenville, South Carolina 29601

Shelia Y. McCumbee  
Shelia Y. McCumbee

**SWORN AND SUBSCRIBED** before me,  
this 20<sup>th</sup> day of April 2023.

Donna H. Hand  
Notary Public for South Carolina  
My Commission Expires: 3-28-26

KELAHER, CONNELL & CONNOR, P.C.  
ATTORNEYS AT LAW  
SUITE 209  
THE COURTYARD  
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P.O. DRAWER 14547  
SURFSIDE BEACH, SOUTH CAROLINA 29587

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LISA POE DAVIS  
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April 20, 2023

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Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Appellate Case No. 2022-001606  
*Ray Wallauer, et al. v. Advantage Solar, LLC.*  
C/A No. 2020-CP-26-04144  
Our File Nos. 2020-0164C and 2020-0165C

Dear Ms. Kitchings:

Enclosed please find Respondents' Reply to Appellant's Return to Respondents' Motion to Tax Costs and Proof of Service in the above-captioned case.

By copy of this letter, we hereby serve a copy of the above-stated documents on counsel of record.

With best regards, I am

Sincerely yours,



Gene M. Connell, Jr.

GMCJr:sm  
Enclosures

cc w/enc.: Joseph O. Smith, Esquire  
Joshua J. Hudson, Esquire