

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Thomas A. Russo, Circuit Court Judge
Case No. 2014-CP-26-07790

Opinion No. 2022-UP-085 (filed March 2, 2022)
Appellate Case No.: 2022-000693

RECEIVED
May 05 2023
SC Court of Appeals

Richard Ciampanella,Respondent,

v.

City of Myrtle Beach,Petitioner.

Petitioner City of Myrtle Beach’s Return to Respondent’s Motion to Tax Costs

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Petitioner City of Myrtle Beach (the “City”) submits this Return opposing Respondent’s Motion to Tax Costs.

Rule 222(a) of the South Carolina Appellate Court Rules provides, “*Unless otherwise ordered by the appellate court* or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed.” (emphasis added). This emphasized clause specifically grants the Supreme Court the discretion to choose *not* to award costs.

The Supreme Court, acting in its discretion, should decline to award costs in this appeal because the City presented a compelling issue on appeal. Specifically, the issue on appeal arose after the circuit court judge granted a directed verdict on all issues and then reversed himself in part after Respondent filed a motion for a new trial. The fact the circuit court judge reversed his initial ruling shows a question on the appealed issues exists on which reasonable minds could differ

and the City had a good-faith basis for pursuing this appeal. The Court of Appeals heard oral arguments on this issue, further showing this was a compelling issue, and the City had a good-faith basis for pursuing an appeal.

Additionally, the City is a governmental entity against which liability is limited under the South Carolina Tort Claims Act. See S.C. Code Ann. § 15-78-200 (“The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and *must be liberally construed in favor of limiting the liability* of the governmental entity.” (emphasis added)); c.f. Rule 54(d), SCRCP (“[C]osts against the State, its officers and agencies [in the trial court] shall be imposed only to the extent permitted by law.”). The Court should consider the City’s status as a governmental entity when determining whether costs are appropriate.

Finally, should the Court determine costs are appropriate, the City respectfully requests the Court decline to award Respondent costs for obtaining the trial transcript because Respondent obtained the trial transcript in preparation for his Motion for a New Trial, which occurred *prior to* the City’s filing of the Notice of Appeal. In fact, Respondent referenced the trial transcript at his Motion for a New Trial and offered the trial court a copy of the same. **(R. 835-36, 842-43)**. Thus, Respondent already had the trial transcript when this Notice of Appeal was filed and did not need to expend additional funds to obtain another copy.

Based on the foregoing, the City requests this Court deny Respondent’s Motion to Tax Costs. Alternately, should the Court award costs, the City requests this Court decline to award Respondent the \$1,241.24 he claims for obtaining the trial transcript, as he obtained it for use at his own new trial motion and not for the appeal.

Respectfully submitted,
COLLINS & LACY, P.C.

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BEACH'S RETURN TO RESPONDENT'S
MOTION TO TAX COSTS

Columbia, South Carolina
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