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May 12 2023

SC Court of Appeals

GRIMBALL & CABANISS, L.L.C.

ATTORNEYS AT LAW  
NORTHBRIDGE EXECUTIVE PARK

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CHARLESTON, SC 29407

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May 12, 2023

e-mail: [warren.moise@gmail.com](mailto:warren.moise@gmail.com)  
writer's extension no. 316

WILLIAM H. GRIMBALL (1917-1999)  
JOSEPH W. CABANISS (1924-2018)

South Carolina Court of Appeals  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

Re: Donald and Carlee Simmons, Respondents v. Benson  
Hyundai, LLC, Appellant  
Appellate Case No. 2022-000490  
Our File No. 17031.1

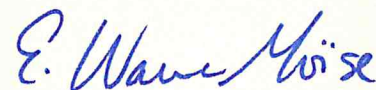
Dear Madame Clerk:

I am following up on the status of the Respondents' Second Motion for Attorney's Fees. We filed the Motion on April 10, 2023 and mailed a fifty dollar (\$50.00) check to the Court the same day to pay for the filing fee. The Appellant filed an Objection to Respondents' Second Motion for Attorney's Fees.

To my knowledge, I have not received any notice or other correspondence from the Court regarding a ruling on or hearing set for the Respondents' Second Motion for Attorney's Fees. Moreover, we contend that the motions for attorney's fees have continued to be "pending." They were never dismissed by any court; thus, we contend that no second motion for attorney's fees is required. We request a motion hearing or an award for the Respondents either in the amount sought in the Motion, or if the Court believes that the proper amount for attorney's fees is \$2,500 instead of \$5,000, we will accept that amount.

With kindest regards, I am

Sincerely yours,



E. Warren Moise

EWM/cg  
Enclosures

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**Mar 18 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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Case No. 2017-CP-42-02072

---

Donald and Carlee Simmons, . . . . . Respondents,

v.

Benson Hyundai, LLC, . . . . . Appellant.

---

RESPONDENTS' MOTION FOR ATTORNEY'S FEES

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Respondents moves this Court as follows for attorney's fees arising from Appellant's appeal.

**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/Respondent 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.<sup>1</sup> 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.<sup>2</sup>

### 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 and Columbia 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.

————— SIGNATURE PAGE TO FOLLOW —————

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<sup>1</sup> The appeal was affirmed as modified by the Court of Appeals.

<sup>2</sup> Record on Appeal at p. 70 (Appellant's Complaint in Arbitration).

S/Warren Moise

E. WARREN MOISE

GRIMBALL & CABANISS, L.L.C.

P. O. BOX 31358

CHARLESTON, SC 29417

Tel: (843) 722-0311

Fax: (843) 722-1374

South Carolina Bar Number 11848

warren.moise@gmail.com

ATTORNEYS FOR THE RESPONDENTS

Dated: March 17, 2022

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Mar 18 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

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.

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 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: March 18, 2022

ITEMIZED STATEMENT OF COSTS  
THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
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J. Derham Cole, Circuit Court Judge

Case No. 2017-CP-42-02072

Donald and Carlee Simmons, . . . . . Respondents,

v.

Benson Hyundai, LLC, . . . . . Appellant.

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				

# Exhibit A

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 <sup>1</sup> (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				

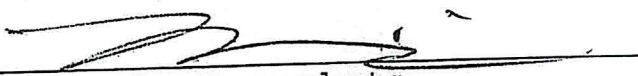
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<sup>1</sup>Though the attorney's fees are over \$2,500, I understand that we may not recover more than that amount. The additional hours are just to show the total work done by Respondents.


# Exhibit A

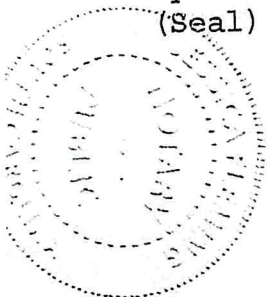
Cost of Printing or Copying Reply Brief				
Cost of Printing or Copying Appendix				
Filing fee paid under Rule 242(c), SCACR				
Attorney's fee provided by Rule 242(j)(2), SCACR				
Other (specify and explain):				
		TOTAL		\$2,500.00

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 17<sup>th</sup> day of March, 2022.

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



## 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
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<b>TOTAL</b>			<b>\$9,205.00</b>

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**

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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.<sup>1</sup>

### III. AUTHORITIES

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### 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 —————

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

S/Warren Moise  
E. WARREN MOISE  
GRIMBALL & CABANISS, L.L.C.  
P. O. BOX 31358  
CHARLESTON, SC 29417  
Tel: (843) 722-0311  
Fax: (843) 722-1374  
South Carolina Bar Number 11848  
warren.moise@gmail.com  
ATTORNEYS FOR THE RESPONDENTS

Dated: April 10, 2023

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ITEMIZED STATEMENT OF COSTS  
THE STATE OF SOUTH CAROLINA **Apr 10 2023**  
In The Court of Appeals

**SC Court of Appeals**

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Derham Cole, Circuit Court Judge

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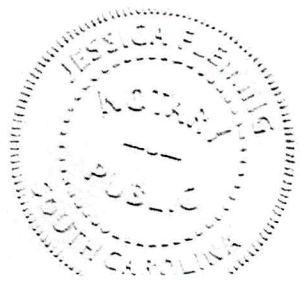
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Filing fee paid under Rule 242(c), SCACR				
Attorney's fee provided by Rule 242(j)(2), SCACR				
Other (specify and explain):				
		TOTAL		

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.

[Signature]  
 Attorney for Respondents

Subscribed and sworn to before me this 10<sup>th</sup> day of April, 2023.

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



## Exhibit B

## Itemization of Attorney Work and Time

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
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APPEAL FROM SPARTANBURG COUNTY  
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Case No. 2017-CP-42-02072

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**Apr 10 2023**

**SC Court of Appeals**

Donald and Carlee Simmons, Respondents

v.

Benson Hyundai, LLC, Appellant.

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

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Apr 11 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

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

Donald and Carlee Simmons ..... Respondents,

v.

Benson Hyundai, LLC ..... Appellant.

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

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.

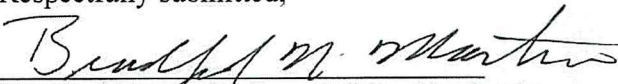
Additional costs are generally not allowed "except in the most extraordinary of circumstances." Rule 222(b). Respondents have not demonstrated "the most extraordinary of circumstances." The appeal in this case has proceeded in an ordinary manner regarding the lower court's order denying Appellant's Motion 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)

Laura W. H. Teer, Esq. (SC Bar No. 16698)

BRADFORD NEAL MARTIN & ASSOCIATES, PA

Post Office Box 10410

Greenville, South Carolina 29603

864.552.9990

Attorneys for Appellant Benson Hyundai, LLC

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**Apr 11 2023**

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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM SPARTANBURG COUNTY  
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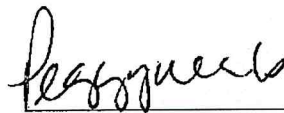
v.

Donald and Carlee Simmons ..... Respondents.

**PROOF OF SERVICE**

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



\_\_\_\_\_  
Peggy McComb, Legal Assistant to  
Bradford N. Martin, Esq. (SC Bar No. 3658)  
Laura W. H. Teer, Esq. (SC Bar No. 16698)  
BRADFORD NEAL MARTIN & ASSOCIATES, PA  
Post Office Box 10410  
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864.552.9990