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May 22 2023

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Civil Action No.: 2015-CP-10-05415
Appellate Case No. 2018-001766

CHARLESTON DEVELOPMENT COMPANY, LLC, CHARLESTON
HOUSING COMPANY, LLC and NOTSO HOSTEL, LLC,

Appellants,

v.

YOUNESSE ALAMI, SIMON M. ADELL, MATTHEW ANDERSON,
MATTHEW ASHER, DANIEL BAKER, MARIE BAKER, MATTHEW AND
CHRISTINA BARE, ANDRE BAUER, PETER BIERCE, BRANDON
BLOUNT, BARBARA BRASS, RICHARD T. BREWER, SIGRID ANNE
EILERTSON, REGINALD P. BROWN, N. MARY CAHILL, RYAN
COCKRELL, KEVIN AND VIRGINIA CONLON, ANNE MARIE CREVAR,
CHRISTINA CROSS, DARRYL J. DAMICO, LABAR DANIEL, STEPHEN
DARWAK, LINDSAY DAVENPORT, MARY DICKERSON, MAXWELL
STREETER, KATHLEEN DOUGHERTY, DAVID DRESSMAN, ANNA
DRESSMAN, MICHAEL ELDER, CHRISTOPHER SCOTT FARLEY,
MICHELE GHASTIN, TIMM GILLER, VIRGINIA GELLER, RYAN GILREATH,
SONYA GILREATH, KIMBERLY GLENN, SHAUN HALSOR, JOSEPHINE
REX, ARTHUR HALVORSON, ANDREW HALVORSON, LINDA
HANCOCK, LAURA HYATT, MIKE HARTEL, NATHAN HERRING, JAMES
HICKS, JR., LAURIE HICKS, PRESTON G. HIPPI, COLIN JONES,
MATTHEW F. JONES, ROBERT C. JONES, ROBIN JOSEPH, MOLLY
KEELER, JOHN KENNY, MANDI WALTERS, ABIGAIL KING, AARON
KLESS, LAURIE KRAMER, ROBERT KRAMER, ALLISON KREUTZER,
BENJAMIN LEVITT, RICHARD LEVITT, JESSE LUTZ, NIKOU
MANOUCHEHRI, THOMAS NASELARIS, ZOE NASELARIS, BEAU
O'STEEN, CORI O'STEEN, LANCE PARR, BRANDON PERDUE,
AMANDA LEE RAYMER, HADASSAH ROTHENBERG, DANIEL RYAN,
KIMBERLY BOWLIN, KEVIN SCHNITTKER, GINGER SCOFIELD,
INDERJIT SINGH, AVTAR SINGH, ALECIA STEVENS, LEE STEVENS,
JUSTIN SWAN, MERRICK TEICHMAN, JOHN VAN VLACK, JR.; WILLIAM

WATERHOUSE, JENNIFER WATERHOUSE, ANNE WOHLFEIL, BRYAN YOUNG, AJB TRUST, ANTHONY & JACQUELINE BRADLEY, TRUSTEES; HARTSHORN FAMILY TRUST, HELENE KENNY, BRIDGET DENNY REVOCABLE TRUST, WILHELMINA M. WIETERS LIFE ESTATE CHILDREN'S TRUST, 33 BOGARD STREET, LLC; 249 CUMMING, LLC; 253 COMING STREET, LLC; 259 EAST BAY, LLC; 259 EAST BAY 10B, LLC; 272 D COMING ST. LLC, CAFE INTERNATIONAL, INC.; COMER AT OLD CANTON, LLC; GEER INTERESTS LLC, KIT PROPERTIES LLC, LAMBERT-WEISS LLC, THE NAWS LLC, NEW LEASE CAPITAL LLC, ONE HENRIETTA LLC, PERIWINKLE PARTNERS, LLC; PORCH PROPERTIES LLC, WESTBURY PROPERTIES, LLC; and WESTENDORFF HARDWARE LLC,

Defendants,

Of Whom YOUNESSE ALAMI, SIMON M. ADELL, MATTHEW ANDERSON, MATTHEW ASHER, ANDRE BAUER, PETER BIERCE, BRANDON BLOUNT, REGINALD P. BROWN IV; MARY CAHILL, RYAN COCKRELL, KEVIN AND VIRGINIA CONLON, ANNE MARIE CREVAR, DARRYL J. DAMICO, STEPHEN DARWAK, LINDSAY DAVENPORT, KATHLEEN DOUGHERTY, DAVID DRESSMAN, ANNA DRESSMAN, MICHAEL ELDER, CHRISTOPHER SCOTT FARLEY, MICHELE GHASTIN, RYAN GILREATH, SONYA. GILREATH, SHAUN RAISOR, JOSEPHINE REX, LAURA HYATT, NATHAN HERRING, JAMES HICKS, JR.; LAURIE HICKS, PRESTON G. HIPPI, COLIN JONES, MATTHEW F. JONES, ROBERT C. JONES, ROBIN JOSEPH, MOLLY KEELER, JOHN KENNY, ABIGAIL KING, AARON KLESS, LAURIE KRAMER, ROBERT KRAMER, ALLISON KREUTZER, JESSE LUTZ, THOMAS NASELARIS, ZOE NASELARIS, BEAU O'STEEN, CORI O'STEEN, LANCE PARR, BRANDON PERDUE, HADASSAH ROTHENBERG, DANIEL RYAN, KIMBERLY BOWLIN, KEVIN SCHNITTKER, GINGER SCOFIELD, ALECIA STEVENS, JUSTIN SWAN, MERRICK TEICHMAN, JOHN VAN VLACIC, JR.; WILLIAM WATERHOUSE, JENNIFER WATERHOUSE, ANNE WOHLFEIL, BRYAN YOUNG, HELENE KENNY/BRIDGET DENNY REVOCABLE TRUST, 259 EAST BAY LLC, 259 EAST BAY 10 B LLC, COMER AT OLD CANTON, LLC; KIT PROPERTIES LLC, THE NAWS LLC, ONE HENRIETTA LLC, PERIWINKLE PARTNERS,_LLC; PORCH PROPERTIES LLC, WESTBURY PROPERTIES, LLC; AND WESTENDORFF HARDWARE LLC, are the

Respondents.

PETITION FOR REHEARING

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*Attorneys for the Petitioners,
Charleston Development Company, LLC;
Charleston Housing Company, LLC; and
NotSo Hostel, LLC*

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COMES NOW the Petitioners, Charleston Development Company, LLC, Charleston Housing Company, LLC and NotSo Hostel, LLC (the “Petitioners”), pursuant to Rules 221(a) and 240(e) of the South Carolina Appellate Court Rules, and hereby respectfully requests this Court of Appeals to rehear, reconsider, and reexamine its decision which resulted in the order issued on 19 May 2023 (the “Appellate Costs Order”), in the above-captioned appeal. This Court of Appeals issued the Appellate Costs Order in response to the joint Return to Motion for Appellate Costs filed by the Petitioner on 7 April 2023. The Petitioners believe that this Petition for Rehearing is based upon valid arguments, good cause, and has not been submitted for the purpose of delay.

STATEMENT OF THE FACTS AND CASE

On 15 January 2023, the Petitioners’ original attorney - Sean K. Trundy, Esquire (“Attorney Trundy”) passed away unexpectedly.¹ In response to this tragic situation, the South Carolina Supreme Court appointed Peyre T. Lumpkin, Esquire (“Attorney Lumpkin”) to assume responsibility for Attorney Trundy’s client files, trust account(s), escrow account(s), operating account(s), and any other law office account(s) which Attorney Trundy maintained as of the time of his death.² Attorney Trundy had handled this litigation and appellate matter in the Charleston County Court of Common

¹ Holt Affidavit, para. 6. See Affidavit of Robert “Bob” Holt sworn to on 22 May 2023 (the “Holt Affidavit”). A copy of the Holt Affidavit is attached hereto as **Exhibit “A”** and incorporated herein by reference as are all similar attachments.

² *Id.*

Pleas, as well as in both this Court of Appeals and in the South Carolina Supreme Court.³ This Court of Appeals issued its opinion herein on 23 June 2021, affirming the trial court’s grant of summary judgment to the Respondents.⁴ This Court of Appeals denied the Petitioners’ *Petition for Rehearing* on 4 August 2021,⁵ and the South Carolina Supreme Court denied the Petitioner’s *Petition for Writ of Certiorari* by order dated 7 March 2023.⁶

Various of the Respondents, by and through counsel, filed *Motions for Appellate Costs* as permitted by Rule 222 of the *South Carolina Appellate Court Rules*.⁷ Daniel C. Boles, Esquire (“Attorney Boles”) filed a *Motion for Appellate Costs* seeking the sum of \$500.00 on behalf of Abigail King.⁸ Attorney Bloodgood filed a *Motion for Appellate Costs* seeking the sum of \$882.72 on behalf of Simon M. Adell, Matthew Anderson, Peter Bierce, Brandon Blount, Ryan Cockrell, Kevin and Virginia Conlon, Kathleen Daugherty, Michael Elder, Preston G. Hipp, Robin Joseph, John Kenny, Brandon Perdue, Hadassah Rothenberg, Kevin Schnittker, Ginger Scofield, Bryan Young, and Helene Kenney/Bridget Kenney Revocable Trust.⁹ Attorney Bloodgood also filed a *Motion for Appellate Costs* seeking the sum of \$500.00 on behalf of Ryan Gilreath and

3 *Id.*, at para. 7.

4 *Id.*, at para. 8. See *Charleston Development Co., LLC v. Alami*, 433 S.C. 533, 860 S.E.2d 687 (Ct.App. 2021).

5 *Id.*, at para. 9.

6 *Id.*, at para. 10.

7 *Id.*, at para. 11.

8 *Id.*, at para. 12.

Sonya Gilreath.¹⁰ David B. Marvel, Esquire (“Attorney Marvel”) filed a *Motion for Appellate Costs* for \$10,000.00 on behalf of Matthew Asher, Anne Marie Crevar, Stephen Darwak, and Ann Wohfeil.¹¹ Gregory K. Voight, Esquire (“Attorney Voight”), filed a *Motion for Appellate Costs* seeking the sum of \$12,500.00 on behalf of Matthew F. Jones, Robert C. Jones, Daniel Ryan, Kimberly Bowlin, 259 East Bay Street LLC, and 259 10B East Bay Street LLC.¹² Finally, Christopher L. Murphy, Esquire (“Attorney Murphy”) filed twenty separate *Motions for Appellate Costs* seeking the sum of \$30,000.00 on behalf of various undesignated Respondents.¹³

On 24 March 2023, this Court of Appeals issued deficiency letters to Attorney Marvel and Attorney Murphy indicating that the Court of Appeals intended to decline to consider their respective *Motions for Appellate Costs* if they did not submit the required sworn, itemized statement of costs as required by Rule 222(d), SCACR, within 10 days, thereafter.¹⁴ Attorney Murphy never filed a response to this Court of Appeals’ 24 March 2023 letter.¹⁵

9 *Id.*, at para. 13.

10 *Id.*, at para. 14.

11 *Id.*, at para. 15.

12 *Id.*, at para. 16.

13 *Id.*, at para. 17.

14 *Id.*, at para. 18. Attorney Marvel filed his Itemized Statement of Attorney’s Fees and Costs with this Court of Appeals on 12 April 2023. *Id.*, at para. 19.

15 *Id.*, at para. 20. By letter dated 2 May 2023, this Court of Appeals advised Attorney Murphy that since he had not corrected the reported deficiencies his 20 Motions for Appellate Costs would not be acted upon. *Id.*, at para. 21.

By order dated 18 May 2023, this Court of Appeals granted all of the still-pending Motions for Appellate Costs awarding Attorney Boles \$500.00, Attorney Bloodgood \$500.00 and \$882.72, Attorney Marvel \$10,000.00, and Attorney Voight \$12,000.00 for a total of \$24,382.72.

The Petitioners herein only respectfully seek this Court of Appeals' rehearing and reexamination of the attorney's fees awards made to Attorney Marvel and Attorney Voight totaling \$22,000.00.

ARGUMENT AND CITATION OF AUTHORITY

It is undisputed that Rule 222(b), SCACR, allow for a successful party to seek incurred appellate costs, as well as attorney's fees of \$2,500.00, assuming the requested amount are properly and timely submitted to and ultimately approved by this Court of Appeals. Nevertheless, appellate costs are not intended to be a punitive measure assessed to further punish the losing party and/or parties. This is particularly true since the applicable appellate rules specifically provides that "the party [entitled to recover appellate costs] shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court."¹⁶ There is a marked difference between the phrase "shall be entitled to recover" attorney's fees and costs as opposed to the phrase "shall recover" attorney's fees and costs. This significant difference clearly interjected a substantial notion of judicial discretion and fairness exercised in light of all of the relevant facts, circumstances, and conditions.

¹⁶ Rule 222(b), SCACR.

Moreover, the Supreme Court, in Austin v. Stokes-Craven Holding Corp., specifically noted that it “[wa]s within [the appellate] [c]ourt’s discretion whether to award fees and costs under Rule 222[, SCACR].”¹⁷ Additionally, it is important that a “ ‘court exercise[] caution in awarding appellate attorney’s fees because of the ‘potentially chilling effect the award may have upon the exercise of the right to appeal.’ ”¹⁸ Given that the taxation of appellate costs and attorney’s fees is discretionary with the appellate court. The simple fact a party succeeds on appeal is insufficient justification for an alleged mandatory costs and attorney’s fees assessment. In fact, “merely proffering appellate arguments that do not ultimately prevail is inadequate to support an award of attorney’s fees to the party who responds to those arguments.”¹⁹ Such an assessment is a matter of fairness and equity to all of the parties involved in light of all of the facts and circumstances of the appeal.²⁰

¹⁷ Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013) (citing Rules 222(a), (e), SCACR (identifying circumstances for which an appellate court may tax costs on appeal)). See also generally In re Marriage of David, 728 N.W.2d 233 (Table), 2006 WL 3613805, at *6 (Iowa App., filed 13 Dec. 2006) (citing In re Marriage of Kurtt, 561 N.W.2d 385, 389 (Iowa App. 1997)) (“An award of appellate attorney fees is not a matter of right, but rests within the court’s discretion.”).

¹⁸ Duncan v. Yocum, 179 N.E.3d 988, 1005 (Ind.App. 2021) (quoting Holland v. Steele, 961 N.E.2d 516, 529 (Ind.App. 2012), trans. Denied). See also Yellow Cab Co. of Bloomington, Inc. v. Williams, 583 N.E.2d 744, 779 (Ind.App. 1991)

¹⁹ See generally Roberts v. Owens, 2023 WL 3161387, at *6 (Ind.App., filed 1 May 2023) (citing Basic v. Amouri, 58 N.E.3d 980, 986 (Ind.App. 2016) (courts do not impose the sanction of attorney’s fees to punish mere lack of merit); Kelley v. Kelley, 158 N.E.3d 396, 400 (Ind.App. 2020) (“just because an appellant is unsuccessful on appeal does not mean the appellee is entitled to appellate attorney’s fees”)).

²⁰ As a practical matter, it appears that the various Respondents each contributed \$500.00 to the collective defense of this litigation at the trial level and during the appellate process. Holt Affidavit, para. 33. See also Itemized Statement of Costs submitted by Attorney

As has been recognized, “there must be evidence to support an award of attorney's fees on appeal.”²¹ A review of the record clearly demonstrates that, even though “appellate” counsel for many of the Respondents joined in the *Final Brief of the Respondents*,²² Attorney Bloodgood was the designated signatory and all of the documents originated from her office.²³ In addition, Attorney Bloodgood was the designated signatory for the *Respondents’ Return to Petition for Rehearing*, as well as the *Respondents’ Return to the Petition for Writ of Certiorari*, for which none of the other Respondents’ appellate counsel joined in.²⁴

As for the motions seeking appellate costs, both Attorney Murphy’s motion dated 23 March 2024, and the subsequent *Itemized Statement of Attorney’s Fees and Costs* dated 12 April 2023, completely failed to offer any explanation whatsoever of how his four disclosed Respondents²⁵ actually incurred *appellate* attorney’s fees of \$2,500.00

Boles dated and filed on 20 March 2023; *Itemized Statement of Costs* submitted by Attorney Bloodgood dated and filed on 22 March 2023; *E-Mail to Court of Appeals Filings from Nancy Bloodgood, Esquire* dated 22 March 2023 (“Ms. Kitchings, Attached for filing please find a Motion for Costs for Respondents Sonya and Ryan Gilreath who would like to be reimbursed the appellate fees they paid to me and a Motion for Costs for my law firm for unreimbursed appellate fees [from her other 17 or so Respondents].

²¹ *Gilbert v. City of El Paso*, 327 S.W.3d 332, 337 (Tex.App. 2010) (citing *Varner v. Cardenas*, 218 S.W.3d 68, 69–70 (Tex. 2007); *C & K Invs. v. Fiesta Group, Inc.*, 248 S.W.3d 234, 252 (Tex.App. 2007, no pet.); *Reeves County, Tx. v. Pecos River Livestock, Inc.*, 2000 WL 1433870, at *10 (Tex.App., filed 28 Sept. 2000, no pet.)).

²² *Holt Affidavit*, para. 29.

²³ *Id.*, at para. 32.

²⁴ *Id.*, at paras. 30-31.

²⁵ Those Respondents were Matthew Asher, Anne Marie Crevar, Stephen Darwak, and Ann Wohfeil. *Id.*, at para. 15.

per respondent.²⁶ Moreover, Attorney Marvel noted in the original motion that he “represented the moving [R]espondents in the circuit court and on appeal [and] that all [of the] [R]espondents prevailed [at the trial court] and on appeal”²⁷ There is no indication that the \$10,000.00 in attorney’s fees which Attorney Marvel sought and for which this Court of Appeals awarded him were solely for attorney’s fees incurred by his clients for Attorney Marvel’s appellate activities. The language Attorney Marvel used in his motion implies, at worst, an attempt to recover attorney’s fees for work performed at both the trial and appellate levels.

Similarly, Attorney Voight’s motion, dated 23 March 2023, completely failed to offer any explanation whatsoever of how his six disclosed Respondents²⁸ actually incurred *appellate* attorney’s fees of \$2,500.00 per respondent.²⁹ Moreover, Attorney Voight, exactly as done by Attorney Marvel, noted in the motion that he “represented the moving [R]espondents in the circuit court and on appeal [and] that all [of the]

²⁶ *Id.*, at para. 34. Of all the filed motions seeking attorney’s fees, only Attorney Bloodgood’s motion (and accompanying correspondence) contained an explanation of the costs she sought for her clients and for herself. Moreover, Attorney Bloodgood, even though clearly representing multiple respondents, declined to seek the maximum allowable attorney’s fees of \$2,500.00 in either of her motions. This was the case notwithstanding the fact that it certainly appears that Attorney Bloodgood performed the vast majority, if not all, of the appellate work for all of the respondents in both this Court of Appeals, as well as in the South Carolina Supreme Court.

²⁷ Motion for Attorney’s Fees Pursuant to Rule 222, SCACR, dated 23 March 2023, and filed 22 March 2023, at p.2.

²⁸ Those Respondents were Matthew F. Jones, Robert C. Jones, Daniel Ryan, Kimberly Bowlin, 259 East Bay LLC and 259 East Bay 1OB LLC. Holt Affidavit, at para. 16.

²⁹ *Id.*, at para. 35.

[R]espondents prevailed [at the trial court] and on appeal . . .”**30** There is no indication that the \$12,000.00 in attorney’s fees which Attorney Voight sought and which this Court of Appeals awarded to him were solely for attorney’s fees incurred by his clients for Attorney Voight’s appellate activities. The language Attorney Voight used in his motion implies, at worst, an attempt to recover attorney’s fees for work performed at both the trial and appellate levels.

An award of attorney’s fees pursuant to Rule 222, SCACR, necessarily presupposes that the appellate counsel’s appellate client and/or clients actually were required to pay attorney’s fees to the appellate counsel for work performed in prosecuting or defend the appellate proceedings.**31** Consequently, an award of attorney’s fees pursuant to Rule 222, SCACR, is designed to minimally compensate appellate counsel for efforts expended in representing his or her appellate client or clients since, under normal circumstances, the appellate client or clients will likely incur attorney’s fees well in excess of \$2,500.00.**32** Moreover, an award of attorney’s fees pursuant to Rule 222, SCACR, is not and should not be viewed as merely a windfall reward for an appellate counsel simply representing one or more appellants or respondents and who performs little or no work at the appellate level.**33**

30 Motion for Attorney’s Fees Pursuant to Rule 222, SCACR, dated and filed 23 March 2023, at p.2.

31 Holt Affidavit, para. 36.

32 Id., at para. 37.

33 Id., at para. 38.

Absent proof of incurred appellate attorney's fees and costs, attributable to multiple appellants or multiple respondents, it is not reasonable to assume that the intent of the appellate costs award provisions is to provide appellate counsel who represents either multiple appellants or multiple respondents with a windfall by multiplying the \$2,500.00 in awardable attorney's fees by the number of appellants or respondents.³⁴ It seems more reasonable that the intent of the appellate costs award provisions is to provide appellate counsel with \$2,500.00 in attorney's fees regardless of the number of appellants or respondents the particular appellate counsel may represent in an appellate proceeding, unless such appellate counsel is able to demonstrate that one or more of the client-appellants or client-respondents incurred \$2,500.00 or more in appellate attorney's fees.³⁵

Neither Attorney Marvel or Attorney Voight set forth any justification, reasonable or otherwise, as to how their respective respondents each individually incurred the requested appellate attorney's fees of \$2,500.00 per respondent. More importantly, there is no explanation whatsoever or legal authority to justify Attorney Marvel's and/or Attorney Voight's asserted multiplication of the requested assessable \$2,500.00 in attorney's fees for each respondent which Attorney Marvel and Attorney Voight represented.

34 *Id.*, at para. 39.

35 *Id.*, at para. 40.

In Oliver v. South Carolina Dept. of Highways and Public Trans., the South Carolina Supreme Court noted that “ [c]osts and expenses of actions and proceedings are allowed to be taxed against the losing party only by statute” and such provisions must be strictly construed.³⁶ There is no language contained either in Rule 222, SCACR, or in any case decision interpreting Rule 222, SCACR, which states or, for that matter, even reasonably implies, that an appellate attorney who represents multiple successful respondents or appellants is thereby entitled to \$2,500 (or some lesser requested amount) per each respondent or appellant. The attorney’s fees amount was set at \$2,500.00, not some multiple of that amount.

CONCLUSION

The Petitioners, Charleston Development Company, LLC, Charleston Housing Company, LLC and NotSo Hostel, LLC, respectfully request this Court of Appeals to rehear, reexamine, and reevaluated the order from this Court of Appeals awarding \$10,000.00 to Attorney Marvel and \$12,500.00 to Attorney Voight for their respective *Motions for Appellate Costs* previously filed herein. The record fails to support the two awards of attorney’s fees as neither Attorney Marvel nor Attorney Voight presented any evidence their respective appellate client-respondents actually incurred such appellate attorney’s fees or that either Attorney Marvel or Attorney Voight performed appellate work justifying such attorney’s fees awards under the facts and circumstances of this matter.

³⁶ Oliver v. South Carolina Dept. of Highways and Public Trans., 309 S.C. 313, 318, 422 S.E.2d 128, 131 (1992) (quoting South Carolina Public Service Authority v. Spearwint Liquidating Co., 201 S.C. 207, 209, 22 S.E.2d 252, 253 (1942)).

Respectfully submitted:

BUTLER SNOW LLP

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*Attorneys for the Appellants,
Charleston Development Company, LLC;
Charleston Housing Company, LLC; and
NotSo Hostel, LLC*

Charleston, South Carolina

22 May 2023
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**STATE OF SOUTH CAROLINA
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Appeal from the Court of Common Pleas
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Honorable R. Markley Dennis, Jr., Circuit Court Judge
Civil Action No.: 2015-CP-10-05415
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CHARLESTON DEVELOPMENT COMPANY, LLC,
CHARLESTON HOUSING COMPANY, LLC and NOTSO
HOSTEL, LLC,

Petitioners,

v.

YOUNESSE ALAMI, *ET AL.*,

Defendants,

Of Whom YOUNESSE ALAMI, *ET AL.*, are the

Respondents.

AFFIDAVIT OF ROBERT HOLT

7. Attorney Trundy had been handling this litigation matter for the Petitioners at the trial court level, as well as this appellate matter in both this Court of Appeals and in the South Carolina Supreme Court.

8. This Court of Appeals issued its decision in this case on 23 June 2021 affirming the Trial Court's grant of summary judgment to the Respondents. See Charleston Development Co., LLC v. Alami, 433 S.C. 533, 860 S.E.2d 687 (Ct.App. 2021).

9. On 7 July 2021, the Petitioners filed their joint *Petition for Rehearing* in this Court of Appeals, which was, in turn, denied by order dated 4 August 2021.

10. On 30 August 2021, the Petitioners filed their joint *Petition for Writ of Certiorari* with the South Carolina Supreme Court, which was denied by order dated 7 March 2023.

11. Various of the Respondents, by and through counsel, filed *Motions for Appellate Costs* as permitted by Rule 222 of the South Carolina Appellate Court Rules.

12. Daniel C. Boles, Esquire ("Attorney Boles") filed a *Motion for Appellate Costs* seeking the sum of \$500.00 on behalf of Abigail King.

13. Nancy Bloodgood, Esquire ("Attorney Bloodgood") filed a *Motion for Appellate Costs* seeking the sum of \$882.72 on behalf of Simon M. Adell, Matthew Anderson, Peter Bierce, Brandon Blount, Ryan Cockrell, Kevin and Virginia Conlon, Kathleen Daugherty, Michael Elder, Preston G. Hipp, Robin Joseph, John Kenny, Brandon Perdue, Hadassah Rothenberg, Kevin Schnittker, Ginger Scofield, Bryan Young, and Helene Kenney/Bridget Kenney Revocable Trust.

14. Attorney Bloodgood also filed a *Motion for Appellate Costs* seeking the sum of \$500.00 on behalf of Ryan Gilreath and Sonya Gilreath.

15. David B. Marvel, Esquire (“Attorney Marvel”) filed a *Motion for Appellate Costs* for \$10,000.00 on behalf of Matthew Asher, Anne Marie Crevar, Stephen Darwak, and Ann Wohfeil.

16. Gregory K. Voight, Esquire (“Attorney Voight”), filed a *Motion for Appellate Costs* seeking the sum of \$12,500.00 on behalf of Matthew F. Jones, Robert C. Jones, Daniel Ryan, Kimberly Bowlin, 259 East Bay Street LLC, and 259 10B East Bay Street LLC.

17. Christopher L. Murphy, Esquire (“Attorney Murphy”) filed twenty separate *Motions for Appellate Costs* seeking the sum of \$30,000.00 on behalf of various undesignated Respondents.

18. On 24 March 2023, this Court of Appeals issued deficiency letters to Attorney Marvel and Attorney Murphy indicating that the Court of Appeals intended to decline to consider their respective *Motions for Appellate Costs* if they did not submit the required sworn, itemized statement of costs as required by Rule 222(d), SCACR, within 10 days, thereafter.

19. Attorney Marvel filed his *Itemized Statement of Attorney’s Fees and Costs* with this Court of Appeals on 12 April 2023.

20. Attorney Murphy never filed a response to this Court of Appeals’ 24 March 2023 letter.

21. By letter dated 2 May 2023, this Court of Appeals advised Attorney Murphy that since the reported deficiencies had not been corrected his 20 *Motions for Appellate Costs* would not be acted upon.

22. By order dated 18 May 2023, this Court of Appeals granted all of the still-pending *Motions for Appellate Costs* awarding Attorney Boles \$500.00, Attorney Bloodgood \$500.00 and \$882.72, respectively; Attorney Marvel \$10,000.00, and Attorney Voight \$12,000.00 for a total of \$24,382.72.

23. As the owner of the Petitioners, I understand the utility of an award of appellate costs, which include attorney's fees, however, I do not believe the intent of the appellate costs award provisions is to punish, with impunity, an appellate who in good faith seeks a judicial determination of a dispute, but is unsuccessful in that pursuit.

24. I understand that the sum of \$2,500.00 does not normally represent the true amount of attorney's fees incurred by an appellate counsel in representing a single appellant or multiple appellants.

25. I understand that the sum of \$2,500.00 does not normally represent the true amount of attorney's fees incurred by an appellate counsel in representing a single respondent or multiple respondents.

26. Nevertheless, I believe that absent extraordinary circumstances, the appellate arguments made by appellate counsel for multiple appellants or multiple respondents will almost always be the same regardless of the actual number of appellants or respondents.

27. I do not believe that this Court of Appeals' award of \$10,000.00 to Attorney Murphy was either fair or equitable as there has been no evidence presented that Attorney Murphy incurred the sum of \$10,000.00 in attorney's fees on behalf of either Matthew Asher, Anne Marie Crevar, Stephen Darwak, or Ann Wohfeil, individually and/or collectively.

28. I do not believe that this Court of Appeals' award of \$12,500.00 to Attorney Voight was either fair or equitable as there has been no evidence presented that Attorney Voight incurred the sum of \$12,500.00 in attorney's fees on behalf of either Matthew F. Jones, Robert C. Jones, Daniel Ryan, Kimberly Bowlin, 259 East Bay Street LLC, or 259 10B East Bay Street LLC, individually and/or collectively.

29. The Respondents' collective and joint arguments on appeal made in this Court of Appeals were exactly the same as demonstrated by the fact the Respondents collectively filed a single brief (*Final Brief of the Respondents*) authored by Attorney Bloodgood, but "joined" in by the other appellate counsel for Respondents.

30. The Respondents' collective and joint arguments made in this Court of Appeals in response to the Petitioners' 7 July 2021, *Petition for Rehearing* were exactly the same as demonstrated by the fact the Respondents collectively filed a single *Return to Petition for Rehearing* on 23 July 2021, authored by Attorney Bloodgood on behalf of all of the Respondents, but not specifically joined in by any of the other appellate counsel.

31. The Respondents' collective and joint arguments made in the South Carolina Supreme Court in response to the Petitioners' 30 August 2021, *Petition for Writ of Certiorari* were exactly the same as demonstrated by the fact the Respondents collectively filed a single *Return to Petition for Writ of Certiorari* on 29 September 2021, authored by Attorney Bloodgood on behalf of all of the Respondents, but not specifically joined in by any of the other appellate counsel.

32. In each situation, whether the *Final Respondents' Brief*, the *Respondents' Return to Petition for Rehearing*, or the *Respondents' Return to the Petition for Writ of Certiorari*, all of the submitted documents and the accompanying correspondence originated from Attorney Bloodgood's Office and not from that of any of the other Respondents.

33. I believe that each of the Respondents, including the various Respondents represented by both Attorney Marvel and Attorney Voight, paid the sum of \$500.00 to Attorney Bloodgood representing each Respondents' respective share of the collective cost of defending the Petitioners' appeal in this matter, to include applicable appellate attorney's fees and appellate litigation costs.

34. Attorney Marvel has not submitted any evidence whatsoever that any of his client-Respondents actually incurred any appellate attorney's fees, much less for the assessable amount of \$2,500.00, for work which he performed on the *Final Respondents' Brief*, the *Respondents' Return to Petition for Rehearing*, and/or the *Respondents' Return to the Petition for Writ of Certiorari*.

35. Attorney Voight has not submitted any evidence whatsoever that any of his client-Respondents actually incurred any appellate attorney's fees, much less than the assessable amount of \$2,500.00, for work which he performed on the *Final Respondents' Brief*, the *Respondents' Return to Petition for Rehearing*, and/or the *Respondents' Return to the Petition for Writ of Certiorari*.

36. An award of attorney's fees pursuant to Rule 222, SCACR, necessarily presupposes that the appellate counsel's appellate client and/or clients actually were required to pay the appellate counsel for work performed in prosecuting or defend the appellate proceedings.

37. I believe that an award of attorney's fees pursuant to Rule 222, SCACR, is designed to minimally compensate appellate counsel for efforts expended in representing his or her appellate client or clients since, under normal circumstances, the appellate client or clients will likely incur attorney's fees well in excess of \$2,500.00.

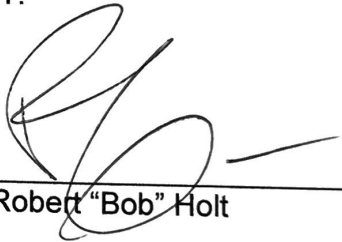
38. I believe that an award of attorney's fees pursuant to Rule 222, SCACR, is not and should not be viewed as merely a windfall reward for an appellate counsel simply representing one or more appellants or respondents and who performs little or no work at the appellate level.

39. Absent proof of incurred attorney's fees and costs, attributable to multiple appellants or multiple respondents, I do not believe the intent of the appellate costs award provisions is to provide appellate counsel who represents either multiple appellants or multiple respondents with a windfall by multiplying the \$2,500.00 in awardable attorney's fees by the number of appellants or respondents.

40. I believe that the intent of the appellate costs award provisions is to provide appellate counsel with \$2,500.00 in attorney's fees regardless of the number of appellants or respondents the particular appellate counsel may represent unless such appellate counsel is able to demonstrate that one or more of the appellants or respondents incurred at least \$2,500.00 in attorney's fees or more than that amount.

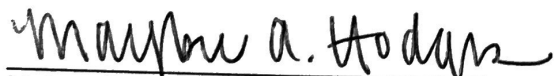
41. Again, I certify and attest that, even though I did not draft this affidavit, I have read each line and agree and attest to the entire contents of this affidavit as if I had prepared it myself.

FURTHER AFFIANT SAYETH NOT.

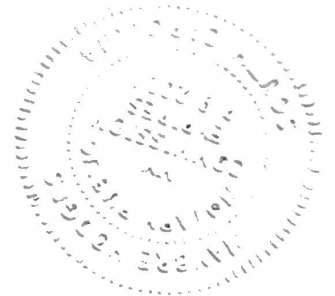


Robert "Bob" Holt

Sworn before me this 22th day of May 2023


Notary Public for the State of South Carolina

My Commission Expires: 9/9/2024
69393677.v1



**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

RECEIVED

May 22 2023

SC Court of Appeals

Appeal from the Court of Common Pleas
For Charleston County
Honorable R. Markley Dennis, Jr., Circuit Court Judge
Civil Action No.: 2015-CP-10-05415
Appellate Case No. 2018-001766

CHARLESTON DEVELOPMENT COMPANY, LLC, CHARLESTON
HOUSING COMPANY, LLC and NOTSO HOSTEL, LLC,

Appellants,

v.

YOUNESSE ALAMI, SIMON M. ADELL, MATTHEW ANDERSON,
MATTHEW ASHER, DANIEL BAKER, MARIE BAKER, MATTHEW AND
CHRISTINA BARE, ANDRE BAUER, PETER BIERCE, BRANDON
BLOUNT, BARBARA BRASS, RICHARD T. BREWER, SIGRID ANNE
EILERTSON, REGINALD P. BROWN, N. MARY CAHILL, RYAN
COCKRELL, KEVIN AND VIRGINIA CONLON, ANNE MARIE CREVAR,
CHRISTINA CROSS, DARRYL J. DAMICO, LABAR DANIEL, STEPHEN
DARWAK, LINDSAY DAVENPORT, MARY DICKERSON, MAXWELL
STREETER, KATHLEEN DOUGHERTY, DAVID DRESSMAN, ANNA
DRESSMAN, MICHAEL ELDER, CHRISTOPHER SCOTT FARLEY,
MICHELE GHASTIN, TIMM GILLER, VIRGINIA GELLER, RYAN
GILREATH, SONYA GILREATH, KIMBERLY GLENN, SHAUN HALSOR,
JOSEPHINE REX, ARTHUR HALVORSON, ANDREW HALVORSON,
LINDA HANCOCK, LAURA HYATT, MIKE HARTEL, NATHAN HERRING,
JAMES HICKS, JR., LAURIE HICKS, PRESTON G. HIPPIE, COLIN
JONES, MATTHEW F. JONES, ROBERT C. JONES, ROBIN JOSEPH,
MOLLY KEELER, JOHN KENNY, MANDI WALTERS, ABIGAIL KING,
AARON KLESS, LAURIE KRAMER, ROBERT KRAMER, ALLISON
KREUTZER, BENJAMIN LEVITT, RICHARD LEVITT, JESSE LUTZ,
NIKOU MANOUCHEHRI, THOMAS NASELARIS, ZOE NASELARIS,
BEAU O'STEEN, CORI O'STEEN, LANCE PARR, BRANDON PERDUE,
AMANDA LEE RAYMER, HADASSAH ROTHENBERG, DANIEL RYAN,
KIMBERLY BOWLIN, KEVIN SCHNITTKER, GINGER SCOFIELD,
INDERJIT SINGH, AVTAR SINGH, ALECIA STEVENS, LEE STEVENS,
JUSTIN SWAN, MERRICK TEICHMAN, JOHN VAN VLACK, JR.;
WILLIAM WATERHOUSE, JENNIFER WATERHOUSE, ANNE

WOHLFEIL, BRYAN YOUNG, AJB TRUST, ANTHONY & JACQUELINE BRADLEY, TRUSTEES; HARTSHORN FAMILY TRUST, HELENE KENNY, BRIDGET DENNY REVOCABLE TRUST, WILHELMINA M. WIETERS LIFE ESTATE CHILDREN'S TRUST, 33 BOGARD STREET, LLC; 249 CUMMING, LLC; 253 COMING STREET, LLC; 259 EAST BAY, LLC; 259 EAST BAY 10B, LLC; 272 D COMING ST. LLC, CAFE INTERNATIONAL, INC.; COMER AT OLD CANTON, LLC; GEER INTERESTS LLC, KIT PROPERTIES LLC, LAMBERT-WEISS LLC, THE NAWS LLC, NEW LEASE CAPITAL LLC, ONE HENRIETTA LLC, PERIWINKLE PARTNERS, LLC; PORCH PROPERTIES LLC, WESTBURY PROPERTIES, LLC; and WESTENDORFF HARDWARE LLC,

Defendants,

Of Whom YOUNESSE ALAMI, SIMON M. ADELL, MATTHEW ANDERSON, MATTHEW ASHER, ANDRE BAUER, PETER BIERCE, BRANDON BLOUNT, REGINALD P. BROWN IV; MARY CAHILL, RYAN COCKRELL, KEVIN AND VIRGINIA CONLON, ANNE MARIE CREVAR, DARRYL J. DAMICO, STEPHEN DARWAK, LINDSAY DAVENPORT, KATHLEEN DOUGHERTY, DAVID DRESSMAN, ANNA DRESSMAN, MICHAEL ELDER, CHRISTOPHER SCOTT FARLEY, MICHELE GHASTIN, RYAN GILREATH, SONYA. GILREATH, SHAUN RAISOR, JOSEPHINE REX, LAURA HYATT, NATHAN HERRING, JAMES HICKS, JR.; LAURIE HICKS, PRESTON G. HIPPI, COLIN JONES, MATTHEW F. JONES, ROBERT C. JONES, ROBIN JOSEPH, MOLLY KEELER, JOHN KENNY, ABIGAIL KING, AARON KLESS, LAURIE KRAMER, ROBERT KRAMER, ALLISON KREUTZER, JESSE LUTZ, THOMAS NASELARIS, ZOE NASELARIS, BEAU O'STEEN, CORI O'STEEN, LANCE PARR, BRANDON PERDUE, HADASSAH ROTHENBERG, DANIEL RYAN, KIMBERLY BOWLIN, KEVIN SCHNITTKER, GINGER SCOFIELD, ALECIA STEVENS, JUSTIN SWAN, MERRICK TEICHMAN, JOHN VAN VLACIC, JR.; WILLIAM WATERHOUSE, JENNIFER WATERHOUSE, ANNE WOHLFEIL, BRYAN YOUNG, HELENE KENNY/BRIDGET DENNY REVOCABLE TRUST, 259 EAST BAY LLC, 259 EAST BAY 10 B LLC, COMER AT OLD CANTON, LLC; KIT PROPERTIES LLC, THE NAWS LLC, ONE HENRIETTA LLC, PERIWINKLE PARTNERS, LLC; PORCH PROPERTIES LLC, WESTBURY PROPERTIES, LLC; AND WESTENDORFF HARDWARE LLC, are the

Respondents.

**PROOF OF SERVICE
For The
PETITION FOR REHEARING**

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*Attorneys for the Appellants,
Charleston Development Company, LLC;
Charleston Housing Company, LLC; and
NotSo Hostel, LLC*

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 22 May 2023, I electronically served a copy of the **Petition for Rehearing** submitted by the Petitioners, Charleston Development Company, LLC; Charleston Housing Company, LLC; and NotSo Hostel, LLC, on counsel for the Respondents via e-mails at the addresses indicated as follows:

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By: ***Stephen P. Groves, Sr.***_____

Stephen P. Groves, Sr., Esquire
*Attorneys for the Appellants,
Charleston Development Company, LLC;
Charleston Housing Company, LLC; and
NotSo Hostel, LLC*

Charleston, South Carolina

22 May 2023
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