

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Opinion No. 5094

Neeltec Enterprises, Inc. d/b/a Fireworks Supermarket, Appellant,

vs.

Willard Long, d/b/a Foxy's Fireworks, and d/b/a Fireworks
Superstore, Respondent.

RESPONDENT'S RETURN TO MOTION FOR COSTS

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SC Court of Appeals

INTRODUCTION

Pursuant to Rules 222(d) and 240(e), SCACR, Respondent submits this
Return in response to Appellant's Motion for Costs.

ARGUMENTS

1. Appellant should be limited to costs related to proceedings after remand.

This appeal involved three procedural stages: (1) the initial proceedings before this Court, which resulted in a dismissal of the appeal on procedural grounds; (2) the Supreme Court's review of that ruling on certiorari; and (3) this Court's ruling on the merits after remand from the Supreme Court.

As to initial proceedings in this Court, there are two reasons why Appellant is not entitled to an award of costs. First, this Court's earlier ruling did not involve the merits of the appeal, but was based on procedural grounds. Second,

Appellant was not the prevailing party at that stage, inasmuch as the Court ruled in favor of Respondent at that time.

The Supreme Court has already denied Appellant's request for an award of costs related to the certiorari stage of this appeal. Its Order dated August 28, 2012 clearly states: "[Appellant] was not technically entitled to an award under [Rule 242(j), SCACR] since our decision on certiorari did not involve the merits of the circuit court's order..." and "Respondent contends, correctly, that [Appellant] is not entitled to an award under Rule 242(j)."¹

Appellant misinterprets the Supreme Court's use of the terms "at this juncture" in its August 28, 2012 Order. The Supreme Court obviously anticipated further proceedings in this Court following remand. "At this juncture" was clearly intended to refer to the certiorari stage of the appeal, in contrast to any subsequent proceedings. In other words, the Supreme Court sought to avoid any argument that its Order precluded the party ultimately prevailing on appeal from seeking an award of costs after this Court had ruled subsequent to remand.

Regardless, only the Supreme Court has the jurisdiction to award costs related to the certiorari stage of this appeal. Rules 222(e) and 242(j)(5), SCACR. Thus, this Court lacks jurisdiction to entertain this portion of the Motion for Costs in any event.

¹ By implication, the Supreme Court also ruled Appellant was not entitled to an award of costs related to the initial phase of this appeal before the Court of Appeals. Specifically, its Order of August 28, 2012 noted: "[T]he decision of the Court of Appeals ... dismissed [Appellant's] appeal on procedural grounds". Because Appellant was not entitled to an award of costs related to the certiorari stage because the Supreme Court's decision was on procedural grounds and "did not involve the merits", it follows the same ruling applies to this Court's earlier decision that did not involve the merits.

2. Appellant is not entitled to an award of three attorney's fees for one appeal.

Even if Appellant had some basis to seek an award of costs for each stage of this appeal, it should not be entitled to triple the award of attorney's fees provided by Rule 222, n. 1, SCACR. The language of Rule 222 provides for only one attorney's fee: "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." [emphasis added]. Thus, in addition to the reasons set forth under heading 1 above, the Court should deny Appellant's request for the award of separate attorney's fees for all three stages of this single appeal.

3. Appellant's copy charges should be awarded at a rate lower than \$0.25/page.

Appellant requests that it be reimbursed for its copy charges at the rate of \$0.25 per page. It provides no basis for the requested unit charge.

In the experience of Respondent's counsel, copy charges are typically awarded under Rule 222 at the rate of \$0.15 per page.² Any award of copy charges should be at this rate (or an appropriate rate lower than \$0.25 per page).

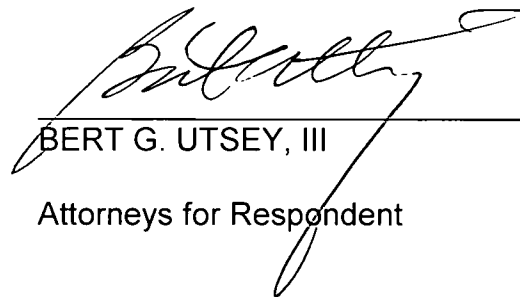
CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court limit any award of costs as set forth above.

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² In fact, this is the rate at which Respondent sought to tax costs in this Court following the initial phase of this appeal. See Respondent's Motion for Costs dated January 24, 2011.

BY:



BERT G. UTSEY, III

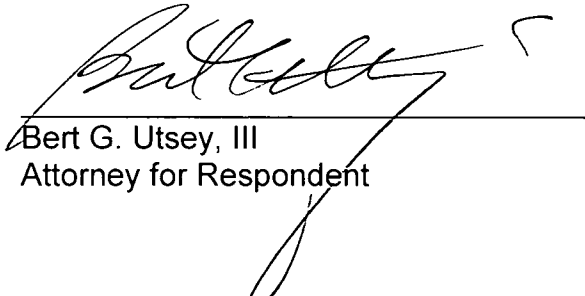
Attorneys for Respondent

July 2, 2013
Walterboro, South Carolina

CERTIFICATE OF SERVICE BY MAIL

The undersigned certifies that this day he served a true and correct copy of the foregoing Return to Motion for Costs upon counsel of record by mailing same via U.S. First Class Mail, postage prepaid, addressed to:

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Robert P. Wood, Esquire
Rogers Townsend & Thomas, PC
Post Office Box 100200
Columbia, South Carolina 29202



Bert G. Utsey, III
Attorney for Respondent

July 2, 2013
Walterboro, South Carolina

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July 2, 2013

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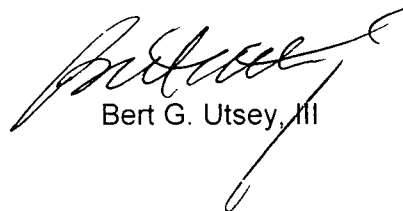
RE: Neeltec Enterprises, Inc. d/b/a Fireworks Supermarket v. Willard Long d/b/a
Foxy's Fireworks and d/b/a Fireworks Superstore
Civil Action No. 06-CP-15-461
Court of Appeals Tracking No.: 2008-101646

Dear Ms. Kitchings:

Enclosed please find original and seven copies of Respondent's Return to Motion for Costs in the above-referenced matter. Please file the original and return one clocked copy to me in the provided self-addressed stamped envelope.

Thank you in advance for your kind assistance.

Sincerely,



Bert G. Utsey, III

BGU, III/hd
Enclosures

cc: Robert J. Thomas, Esquire

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