

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals  
APPEAL FROM COLLETON COUNTY  
Court of Common Pleas  
A. Victor Rawl, Special Referee  
Opinion No. 5094

68912  
RECEIVED  
JUL 25 2013  
SOUTH CAROLINA COURT OF APPEALS

---

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

---

MOTION OF APPELLANT NEELTEC ENTERPRISES, INC. FOR COSTS

---

5734997

Counsel for Appellant Neeltec Enterprises, Inc. ("Neeltec") are unable to determine for sure in which court Neeltec should seek the recovery of costs. The Supreme Court reversed the first judgment of the Court of Appeals which had dismissed Petitioner's appeal from the ruling of the special referee. After the reversal Neeltec's attorneys filed a motion for costs in the Supreme Court and the Court awarded costs. The Supreme Court thereafter granted a motion by Long and vacated the Order awarding costs, issuing this Order dated August 28, 2012:

We reversed the decision of the Court of Appeals which had dismissed petitioner's appeal on procedural grounds and remanded the case to that court for a decision on the merits. Petitioner sought attorneys' fees and costs pursuant to Rule 242(j), ACACR. Although petitioner was not technically entitled to an award under this rule since our decision on certiorari did not involve the merits of the circuit court's order, we granted the request as it was unopposed.

Respondent [Long] has now filed a motion to vacate the Rule 242(j) award, explaining that he did not respond to petitioner's motion because he never received it. Respondent contends, correctly, that petitioner is not entitled to an award under Rule 242(j). We agree, and vacate our earlier order. No requests for cost or attorneys' fees shall be granted *at this juncture*. [emphasis added]

The qualification "at this juncture" seems to reserve jurisdiction over costs in the Supreme Court. This interpretation finds support in Rule 242(j)(5), which provides, "Costs under this Rule shall be taxed by the Supreme Court. If costs are taxed, they shall become part of the judgment of the appellate court and be added to the remittitur."

Yet it was the Court of Appeals that ultimately decided the merits of the appeal and remanded the case to the Circuit Court.

Because Neeltec's attorneys are unsure in which court its motion for costs should be made, they are filing this motion in both the Supreme Court and the Court of Appeals. Neeltec's attorneys certainly do not expect or seek to recover the same costs twice. They are simply proceeding with caution.

\* \* \* \* \*

With the foregoing qualification of uncertainty, Neeltec requests that the Supreme Court tax the following costs in favor of Appellant Neeltec Enterprises, Inc. and against Respondent Willard Long.

[Costs are itemized on the pages that follow]



The following are costs incurred only in seeking a writ of certiorari from the

Supreme Court and briefing and arguing the case before the Supreme Court:

Costs and Fees Taxable Under Rule 222, SCACR	No. of Pages	Rate	Requested	Allowed (For Court use only)
Cost of producing Brief of Petitioner and Reply Brief of Petitioner	220	\$0.25	\$ 55.00	
Cost of Printing or Copying the Appendix, including the duplicating of the Record on Appeal and the Briefs of Counsel (where those already printed were insufficient)	1350	\$0.25	\$ 337.50	
Cost of Court Reporter's Transcript (not applicable)			0.00	
Attorney's Fee Provided by Rule 222(b), SCACR			\$1,000.00	
Filing fee for Petition for Writ of Certiorari			\$ 100.00	
Filing fee for motion for costs			25.00	
Total			\$1,517.50	

The following are costs incurred only in the Court of Appeals in the first instance

(before remand):

Costs and Fees Taxable Under Rule 222, SCACR	No. of Pages	Rate	Requested	Allowed (For Court use only)
Cost of producing Record on Appeal,	1,300	\$0.25	\$ 325.00	
Cost of Printing Final Brief of	460	\$0.25	\$ 115.00	

Appellant and Final Reply Brief of Appellant				
Cost of Court Reporter's Transcript			0.00	
Attorney's Fee Provided by Rule 222(b), SCACR			\$ 1,000.00	
Filing fee for Notice of Appeal			\$ 100.00	
<b>TOTAL</b>			\$ 1,540.00	

The following are costs incurred only in the Court of Appeals (after remand):

Costs and Fees Taxable Under Rule 222, SCACR	No. of Pages	Rate	Requested	Allowed (For Court use only)
Cost of producing extra copies of Record on Appeal, Final Brief of Appellant, and Final Reply Brief of Appellant as requested by the Court of Appeals	310	\$0.25	\$ 77.50	
Cost of Court Reporter's Transcript (not applicable)			0.00	
Attorney's Fee Provided by Rule 222(b), SCACR			\$ 1,000.00	
Filing fee for Motion for Costs			\$ 25.00	
<b>TOTAL</b>			\$1,102.50	

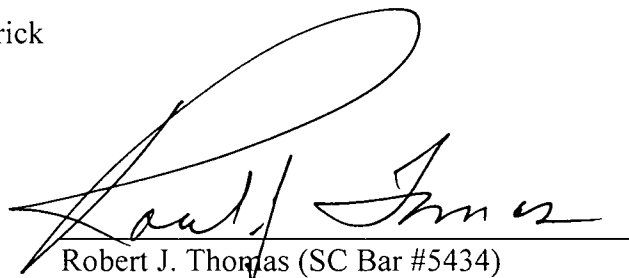
[Signature and Affirmation on next page]

Affirmation

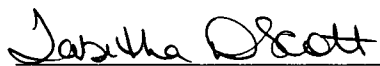
I, Robert J. Thomas, do swear that the foregoing costs are correct and were necessarily incurred in this action. A copy of this statement was served upon opposing counsel by mail, to wit:

Bert G. Utsey, III, Esquire  
Peters Murdaugh Parker Eltzroth & Derrick  
PO Box 1164  
Walterboro, SC 29488

William P. Barnes, III, Esquire  
Peters Murdaugh Parker Eltzroth & Derrick  
PO Box 457  
Hampton, SC 29924-0457

  
Robert J. Thomas (SC Bar #5434)  
Attorney for Appellant

Subscribed and sworn to before me this  
26<sup>th</sup> day of June, 2013

  
Notary Public for South Carolina  
My Commission Expires: 6/18/17

**CERTIFICATE OF SERVICE BY MAIL**  
Case No. 06-CP-15-461  
Court of Appeals Tracking Number: 2008-101646

I, Sheri H. McClendon, a paralegal with the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on June 26, 2013, at the following address:

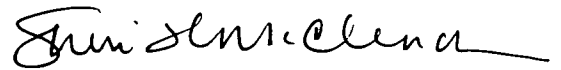
**Document:**

Motion of Appellant Neeltec Enterprises, Inc. for Costs with Itemization  
Affirmation of Robert J. Thomas

**Counsel Served:**

Bert G. Utsey, III, Esquire  
Peters, Murdaugh, Parker, Eltzroth & Detrick  
123 Walter Street  
P.O. Box 1164  
Walterboro, SC 29488

William P. Barnes, III, Esquire  
Peters, Murdaugh, Parker, Eltzroth & Detrick  
123 Walter Street  
P.O. Box 1164  
Walterboro, SC 29488



\_\_\_\_\_  
Sheri H. McClendon, Paralegal

**RECEIVED**  
JUN 28 2013  
**SC Court of Appeals**