

# The Supreme Court of South Carolina

Neeltec Enterprises, Inc., d/b/a Fireworks-Supermarket,  
Petitioner,

v.

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

**RECEIVED**  
JUL 05 2013  
**SC Court of Appeals**

Appellate Case No. 2011-184206

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## ORDER

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This Court reversed a decision of the Court of Appeals dismissing petitioner's appeal on procedural grounds. The case was remanded to the Court of Appeals for a decision on the merits. *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012).

Petitioner sought attorneys' fees and costs pursuant to Rule 242(j), SCACR. The request, albeit improper since this Court's decision on certiorari did not involve the merits of the circuit court's order, was granted because it was unopposed.

However, the order granting attorneys' fees and costs was subsequently vacated when it came to the Court's attention that respondent never received the motion for costs. We agreed with respondent's contention, upon receipt of notice of the motion, that petitioner was not entitled to an award of costs pursuant to Rule 242(j), SCACR, and therefore, by order dated August 28, 2012, vacated the award, stating, "No requests for costs or attorneys' fees shall be granted *at this juncture.*" (Emphasis added).

On remand, the Court of Appeals reversed the decision of the special referee to substitute two corporations for respondent Willard Long in this action. *Neeltec Enters., Inc. v. Long*, 402 S.C. 524, 741 S.E.2d 767 (Ct. App. 2013). Respondent's petition for rehearing was denied and the remittitur was sent to the lower court on June 21, 2013.

Petitioner has now filed a motion for costs in both this Court and the Court of Appeals because it is unable to determine from which court it should seek costs. Petitioner states the phrase emphasized above from this Court's order of August 28, 2012, seems to reserve jurisdiction over costs in this Court. Petitioner contends that interpretation finds support in Rule 242(j), which states, "Costs under this Rule shall be taxed by the Supreme Court." However, petitioner concedes it was the Court of Appeals that ultimately decided the merits of the appeal.

Petitioner's request for this Court to tax costs is denied on the basis that such request should be made to the Court of Appeals pursuant to Rule 222, SCACR. Rule 242(j) only applies to cases in which this Court has rendered a decision involving the merits of the order of the lower court or tribunal that was reviewed by the Court of Appeals. We included the language "at this juncture" in our previous order vacating the award of attorneys' fees and costs because had respondent filed a petition for a writ of certiorari following the issuance of the decision of the Court of Appeals on remand, a request for attorneys' fees and costs would have been appropriate under Rule 242(j), SCACR, following a decision in the matter.

  
C.J.  
FOR THE COURT

Columbia, South Carolina

July 3, 2013

cc:

Robert J. Thomas

Bert Glenn Utsey, III

Robert P. Wood

A. Victor Rawl, Jr.

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