

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK
PROFESSIONAL ASSOCIATION

JOHN E. PARKER
J PAUL DETRICK
DANIEL E. HENDERSON
MARK D. BALL
RANDOLPH MURDAUGH, IV
RONNIE L. CROSBY
R ALEXANDER MURDAUGH
BERT G. UTSEY, III
RANDOLPH MURDAUGH, III
GRAHAME E. HOLMES
LEE D. COPE
MATTHEW V. CREECH
LEAGUE B. CREECH
STEVEN D. MURDAUGH
WILLIAM F. BARNES, III
AUSTIN HOWELL CROSBY
CLYDE A. ELTZROTH, JR.
(INACTIVE)

123 WALTER STREET
POST OFFICE BOX 1164
WALTERBORO, SOUTH CAROLINA 29488
TELEPHONE (843) 549-9544
TOLL FREE: (866) 943-2113
FAX: (843) 549-9546
WWW.PMPED.COM

RANDOLPH MURDAUGH, SR
(1887-1940)
RANDOLPH MURDAUGH, JR.
(1915-1995)
J. ROBERT PETERS, JR.
(1927-2008)

OTHER OFFICES
101 MULBERRY STREET EAST
POST OFFICE BOX 457
HAMPTON, SC 29924
TELEPHONE (803) 943-2111
FAX (803) 943-3943

690 NORTH GREEN STREET
POST OFFICE BOX 2500
RIDGELAND, SC 29936-2500
TELEPHONE (843) 726-6131
FAX: (843) 726-6057

July 9, 2013

Email: butsey@pmped.com

The Hon. Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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

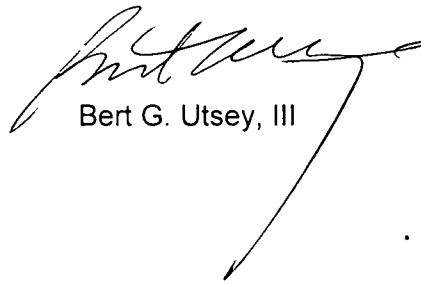
Dear Ms. Kitchings:

On July 2, 2013, I submitted for filing Respondent's Return to Motion for Costs in the above-referenced matter.

The following day, the Supreme Court issued the enclosed Order, which relates to Appellant's Motion for Costs. As the Order was filed the day after I submitted the Return, I did not have the opportunity to cite it in the Return. I am therefore submitting it now for the Court's consideration in connection with this motion.

Thank you for your kind attention to this matter.

Sincerely,


Bert G. Utsey, III

BGU,III/hd
Enclosure

cc: Robert J. Thomas, Esquire

RECORDED
JUL 15 2013
SC Court of Appeals

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.

Appellate Case No. 2011-184206

ORDER

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.

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SC Court of Appeals

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.

Jenny Abbott Kitchings

Patricia C. Grant