

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

J.C. Nicholson, Jr., Circuit Court Judge

Court of Appeals Case No. 2018-000171
Supreme Court Case No. 2021-000137

Cleo Sanders,

Respondent

v.

Savannah Highway Automotive Company, a General Partnership d/b/a Rick Hendrick
Dodge Chrysler Jeep Ram, Santander Consumer US Holdings Inc., Isiah S. White,
Danny Anderson, and Patrick Bachrodt, Jr.
Defendants

Of whom Savannah Highway Automotive Company, a General Partnership d/b/a Rick
Hendrick Dodge Chrysler Jeep Ram and Isiah S. White,
Petitioners/Appellants.

RESPONDENT'S OPPOSITION TO
PETITIONERS/APPELLANTS' REQUEST
FOR COSTS AND ATTORNEY'S FEES.

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d/b/a Rick Hendrick Dodge Chrysler Jeep Ram and Isiah S. White*

Respondent opposes Petitioners/Appellants' request for costs and seeks to have them denied or, at least, reduced per Rules 222 and 242(j)(4), SCACR.

1. PETITIONERS/APPELLANTS' REQUEST FOR COSTS WAS FILED OUT OF TIME AND SHOULD BE DENIED.

Petitioners/Appellants had fifteen days to file their statement of costs with the Supreme Court. They failed to do so. Any request for costs or fees has been waived. Rule 242(j)(1), (4), and (5), SCACR.

Petitioners/Appellants filed their Motion for Costs and statement of costs with the Court of Appeals on October 12, 2023, fifteen days after the remittitur. Costs are taxed by the Court of Appeals only if certiorari is denied. Rule 222(e) SCACR. Certiorari was granted. Thus, a request for costs had to be filed with the Supreme Court within fifteen days of the remittitur, pursuant to Rule 242(j)(4) and (5) SCACR. Since the judgment was vacated, Petitioners/Appellants were required to file their motion with the Supreme Court as it is the only court permitted to allow such costs. Rule 242(j)(1) SCACR. Petitioners/Appellants never filed their motion with the Supreme Court. Since Petitioners/Appellants failed to file timely their motion for costs, Petitioners/Appellants' motion should be denied as waived.

The Court of Appeals did forward Petitioners/Appellants' motion to the Supreme Court on October 19, 2023. This does not save Petitioners/Appellants. They never filed their motion with the Supreme Court and when their motion was forwarded to the Supreme Court, it was filed untimely.

2. DOES NOT COMPLY WITH THE APPELLATE COURT RULES AND SHOULD BE DENIED.

A request for appellate costs must comply with Rules 222 and 242 SCACR.

SCACR. Rule 222 SCACR states:

(a) To Whom Allowed. Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise.

(b) Costs Allowed. The party entitled to recover costs under this rule may, to the extent the party **actually incurred** these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. (Emphasis added.)

Rule 242(j) states:

(2) Costs Allowed. The party entitled to recover costs may recover all those costs specified in Rule 222(b), to include the attorney's fee provided by that rule. Additionally, the party may, to the extent the party actually incurred these costs, recover: (1) the filing fee paid under Rule 242(c); (2) the cost of printing the Appendix under Rule 242(e) and (a); and (3) the cost of printing the party's brief(s) under Rule 242(is). The party may also recover an additional attorney's fee in an amount which shall be set by order of the Supreme Court. The allowance of additional costs will generally not be allowed except in the most extraordinary circumstances.

Petitioners/Appellants have failed to show the Court the costs they “actually incurred” as required. Furthermore, Petitioners/Appellants have requested costs in excess of what the Rules allow. The Court does not have to award the costs requested if it so chooses. The Court should deny Petitioners/Appellants’ request for costs, or at least, reduce them to the amount allowed by the Rules.

Allowable costs under the appellate court rules

At best, Petitioners/Appellants could be allowed the following costs.

Rule 222 SCACR	Cost
(1) the filing fee paid under Rule 203(d)	N/A because it is duplicative of No. 1 under Rule 242
(2) the cost of the court reporter's transcript;	\$78.20 and \$35.75
(3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal	N/A
(4) the cost of printing the Record on Appeal under Rule 209	N/A
(5) the cost of printing the party's final brief(s) under Rule 210	10 copies of the party's final brief – 25 pages at \$.10 per page is \$25.00. If the Reply is included, a 13 page brief at \$.10 per page with 10 copies equals \$13.00
Rule 242 SCACR	
(1) the filing fee paid under Rule 242(c)	\$250.00
(2) the cost of printing the Appendix under Rule 242(e) and (l)	N/A
(3) the cost of printing the party's brief(s) under Rule 242(a)	N/A because it is duplicative of No. 5 under Rule 222
Total allowable costs	\$582.43

Disallowable costs

Petitioners/Appellants' Statement of Costs, however, contains several items that are not allowed.

1. Cost of Printing or Copying Initial Brief – \$448.47. This is not an allowable cost under either Rule 222(b) or Rule 242(j) SCACR. Petitioners/Appellants did not file an Initial Brief with the Supreme Court. Furthermore, there is no proof that this charge was “actually incurred” or what this charge included. The charge also appears overstated. Petitioners/Appellants requested costs for 10 initial briefs. Only one initial brief is filed with the court. Even if a brief were submitted at 50 pages, the charge for one copy to the court would only be \$5.00 ((50 pages x \$.10) x 1 copy.), not \$448.47.
2. Cost of Printing or Copying Initial Brief – \$417.70. This appears to be the same charge as Petitioners/Appellants' first request for the “Cost of Printing or Copying Initial Brief”. Again, this is not an allowable cost under either Rule 222(b) or Rule 242(j) SCACR. Furthermore, there is no proof that this charge was “actually incurred”. Again, the charge appears incorrect as the cost does not seem to match the number of pages that would have been used for this type of brief. If it relates

to a different unidentified brief, it would still not be allowed, and the cost stated is too high.

3. Filing Fee Petition for Rehearing – \$50.00. This is not an allowable cost under Rule 222(b) SCACR nor under Rule 242 SCACR.
4. Cost of Printing or Copying Final Brief - \$478.99 and \$708.27. These are duplicative of the “Cost of Printing or Copying Final Brief” for \$218.48. Petitioners/Appellants should only be allowed to recover for their Final Brief, if at all, one time, not three. Additionally, Petitioners/Appellants’ Final Brief was 25 pages. At \$.10 per page, 10 copies of their Final Brief would have only cost \$25.00, not \$218.48, \$478.99, or \$708.27.

The burden is on Petitioners/Appellants to provide proof of its alleged costs. It has filed to provide the court with any proof of these costs other than the bald allegation that they have been incurred. Because they have presented no evidence of these costs, their request should be denied.

Petitioners/Appellants have requested nonrecoverable costs, greatly exaggerated certain costs, and failed to show to the Court their “actually incurred” costs. Petitioners/Appellants’ request for costs and attorney’s fees should be denied.

3. COSTS AND ATTORNEY’S FEES SHOULD NOT BE ALLOWED AS THE MATTER PRESENTED TO THE COURT WAS A NOVEL ISSUE IN SOUTH CAROLINA.

Since the Court has the discretion to deny costs, including attorney’s fees, under Rule 222(a) and 242 SCACR, Respondent requests an Order from the Court denying Petitioners/Appellants’ request for costs and attorney’s fees because the issue presented was a novel issue.

In this matter, Petitioners/Appellants admitted the retail installment sales contract and the arbitration agreement were fully assigned to Santander. The trial judge and the Court of Appeals ruled in favor of Mr. Sanders. The issue was not forced into the

appellate system for five and one-half years by Mr. Sanders. Because of Petitioners/Appellants' actions, he is still no closer to a resolution to this matter. Instead, he has been prejudiced as he has not been able to preserve the testimony of witnesses who may have disappeared or forgotten the fact. Had Petitioners/Appellants accepted the trial court's ruling, the case could have proceeded to trial and probably resolved before now at a much-reduced cost.

The Court should also consider the novel issue of law presented. Based on the facts as developed and the lack of case law on the subject, Mr. Sanders' believed Petitioners/Appellants' appeal would not be successful. The Court's decision on this issue does not end the case. The Court's decision simply sends the matter to an arbitrator to determine whether the case should be heard in arbitration or in court.

4. COSTS AND ATTORNEY'S FEES SHOULD NOT BE ALLOWED AS MR. SANDERS CANNOT AFFORD THE EXPENSES GENERATED BY PETITIONERS/APPELLANTS' COUNSEL.

Mr. Sanders has very limited resources as shown by the fact the car in this case was repossessed because he could not pay for it. Adding the additional expense of Petitioners/Appellants' counsel's fees makes it even harder for Mr. Sanders to vindicate his rights.

CONCLUSION

Because the court has the discretion to award or not to award costs and attorney's fees, Petitioners/Appellants failed to timely file their motion for costs, Petitioners/Appellants failed to provide any evidence these costs were incurred, and Petitioners/Appellants asked for multiple payments of costs to which they are not entitled

to even once, and Mr. Sanders cannot afford to pay these costs, the motion should be denied.

Charleston, South Carolina
October 23, 2023

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