

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-2695

Opinion No.: 27252

(filed May 15, 2013)

The Town of Hollywood.....Appellant/Respondent,
vs.

William Floyd a/k/a Jeff Floyd,
Troy Readon, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

RESPONDENTS OBJECTION TO APPELLANTS' MOTION FOR COSTS ON APPEAL

August 7, 2013

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Attorneys for Respondents/Appellants

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S.C. SUPREME COURT

Pursuant to Rule 222 of the South Carolina Appellate Court Rules, the prevailing party is entitled to an award of costs. Until 2010, respondent's counsel assumed costs are automatically granted. However, in 2010, respondent's counsel made an application to the Court of Appeals requesting costs after securing the reversal of a circuit court order ("vacated and remanded") granting summary judgment. Following the issuance of the remitter in that case, called *Carey, et. al. v. Snee Farm Community Foundation*, 388 S. C. 229, 694 S.E.2d 244 (Ct. App. 2010), counsel moved for an Order for costs, including a properly executed Form 17 "Itemized Statement of Costs." On August 27, 2010, the Court of Appeals denied all costs without explanation. (See Order attached hereto.) Thereafter on September 3, 23010, the undersigned filed a "Petition for Rehearing For Order Denying Costs." This too, the Court of Appeals denied without explanation. (See Order attached hereto.) As the Court can see from a review of the two Orders, the Court of Appeals did not articulate a basis for its decision. Therefore, the appellate courts possess some discretion in the Court as to whether to award costs, and presumably this discretion is premised upon a balancing of the equities.

If the Court possesses discretion to award costs, then the Court can conclude that an award of costs in this case is unjust. As the Court noted in both oral argument and its written opinion, the landowners in this case were swept up in this litigation because the Town could not articulate a clear standard to apply to the defendant's subdivision application and as a result, Town instituted suit against them resulting from the change in municipal administration. The defendants were the victims of the Town's shifting criteria. Moreover, the Town does need assistance in paying its own costs on appeal. The State of South Carolina provides the Town's defense, and the Town's legal expenses are underwritten by the taxpayers of South Carolina,

including the defendants. The idea that the Town is in need of the contribution from the respondents is not supported by any fact, economic fact, or equitable theory. In short, citizens should not be penalized because a government forces them to defend an action brought against them by a local government.

In addition, the required Form 17 "Itemized Statement of Costs" is deficient as a matter of law. It identifies neither the number of pages printed nor the rate applied. Therefore, both the Court and the respondents must grope in the dark as to the rate paid by the appellants in printing the record on appeal. It is impossible, therefore, to determine if the rate requested is reasonable.


In summary, since the appellate courts possess discretion in these matters, and since the individual respondents suffered so much financially and emotionally, it is unjust under the facts of this case to award costs to a governmental entity who forced the respondents to defend themselves in an action originally brought by the government against them, all of which arose out of the local government's misleading the respondents.

CONCLUSION

For the foregoing reasons, the appellant's applications for costs should be denied.

Respectfully submitted,

August 7, 2013



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The South Carolina Court of Appeals

J. Emilie Carey and Henry
Thomas,

Appellants,

v.

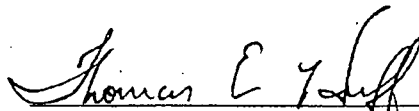
Snee Farm Community
Foundation and Jackie Walker,
President, Defendants, of whom
Snee Farm Community
Foundation is the,

Respondent.

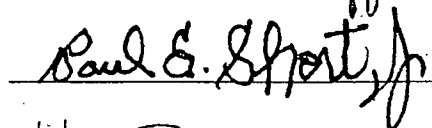
The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No 2007-CP-10-02315

ORDER DENYING MOTION FOR COSTS ON APPEAL

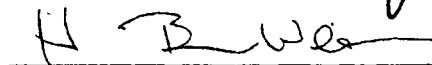
PER CURIAM: After careful consideration of Appellants' Motion for Costs on Appeal pursuant to Rule 222(d), SCACR, the Court hereby denies Appellants' request for fees in the amount of \$3,170.62. It is, therefore, ordered that the Motion for Costs on Appeal be denied.



Huff, J.



Short, J.



Williams, J.

Columbia, South Carolina

August 27, 2010

The South Carolina Court of Appeals

J. Emilie Carey and Henry
Thomas,

Appellants,

v.

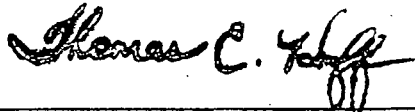
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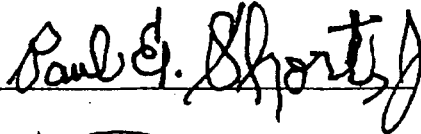
The Honorable R. Markley Dennis, Jr.
Charleston County
Trial Court Case No. 2007-CP-10-02315

ORDER DENYING PETITION FOR REHEARING OF ORDER DENYING COSTS

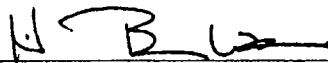
PER CURIAM: After careful consideration of Appellants' "Petition for Rehearing for Order Denying Costs," Respondent's Return, and Appellants' Reply, the Petition for Rehearing is denied.



Huff, J.



Short, J.



Williams, J.

Columbia, South Carolina

FILED

OCT 29 2010

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Roger M. Young, Sr., Circuit Court Judge
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The Town of Hollywood.....Appellant/Respondent,

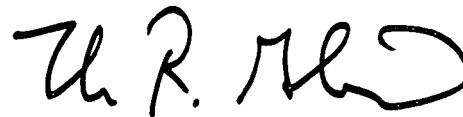
vs.

William Floyd a/k/a Jeff Floyd,
Troy Readen, and Edward McCracken
a/k/a Eddie McCrackenRespondents/Appellants.

CERTIFICATE OF SERVICE

I certify that I served a true and conformed copy of Respondents/Appellants' Return to Motion for Costs upon opposing counsel by placing a copy properly addressed with sufficient postage thereon in the United States mail this 7th day of August, 2013, to the following address: Mr. Andrew Lindemann, Esq. at Davidson & Lindemann, P.A., P. O. Box 8568, Columbia, S. C. 29202-8568, and Mr. Hugh Buyck, Buyck Law Firm, L.L.C., P. O. Box 2424, Mt. Pleasant, SC 29465, as Attorneys for the Appellant/Respondent.

August 7, 2013



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