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**Jun 19 2024**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas  
Honorable Carmen T. Mullen, Circuit Court Judge

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Opinion No. 28204 filed May 15, 2024  
Appellate Case No. 2021-000625

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Road, LLC and Pinckney Point, LLC of whom Road, LLC is the .....Petitioner,

v.

Beaufort County, a political subdivision of the State of South Carolina, .....Respondent.

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**PETITIONER'S RETURN TO RESPONDENT'S  
MOTION FOR FEES AND COSTS**

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## SUMMARY OF ARGUMENT

Petitioner respectfully submits that the Court should deny the Respondent's Motion for Fees and Costs. Petitioner prevailed in reversing the decision of the Court of Appeals on the two grounds that were the basis for its ruling. The decision of this Court finding the Court of Appeals erred in its two holdings demonstrates that Petitioner's appeal was meritorious, even though this Court affirmed the order granting judgment notwithstanding the verdict by the lower court on a separate ground that was not addressed by the Court of Appeals.

## RELEVANT BACKGROUND

This appeal arises from a \$5,000,000 jury verdict rendered on a cause of action for breach of contract asserted by Road, LLC against Beaufort County (the "County" or Respondent). The lower court granted the County's motion for judgment notwithstanding verdict. The Court of Appeals affirmed, holding that there was no proof at trial that supported the amount of the damages awarded and no proof that the County's actions proximately caused damages to Road, LLC. Road, LLC v. Beaufort County, 433 S.C. 164, 176-7, 857 S.E.2d 371, 376-7 (Ct. App. 2021). This Court granted a writ of certiorari to review the decision of the Court of Appeals.

This Court disagreed with the Court of Appeals and ruled that the Court of Appeals was wrong on both grounds for its decision. This Court held that there was proof that Road, LLC sustained damages of \$5,000,000 and proof that the County's actions were the proximate cause of those damages to Road, LLC. **(Opinion, at 13-14)** This Court included an entire section in its Opinion, Part IV "Remaining Issues," explaining in detail the reasons the Court of Appeals' decision was wrong. See generally, (Opinion, at 13-14) ("Therefore, judgment notwithstanding the verdict was inappropriate on the basis Road failed to present evidence of damages."). This Court found error in both reasons for the decision of the Court of Appeals, even though it affirmed

the result on the ground that the implied covenant of good faith and fair dealing applies only to express obligations in a contract and cannot create new obligations:

While the court of appeals improperly weighed the evidence, we nonetheless affirm the order granting judgment notwithstanding the verdict because—as a matter of law—Beaufort County could not have breached the implied covenant of good faith and fair dealing in the Settlement Agreement.

**(Opinion, 15).**

### **DISCUSSION**

In its Motion for Fees and Costs dated June 10, 2024, the County seeks an order awarding it \$5,429.60, representing \$5,000 in legal fees and \$429.60 in costs. For the reasons explained herein, the County is not entitled, as a matter of right, to any attorney’s fees or costs. Further, this Court should not award attorney’s fees or costs to the County.

Rule 242(j)(1) provides as follows:

Unless otherwise ordered by the Supreme Court or agreed to by the parties, costs shall be assessed against the appellant if the decision of the Supreme Court has the effect of affirming the judgment of the lower court or tribunal which was reviewed by the Court of Appeals. When the decision of the Supreme Court has the effect of reversing the judgment of the lower court or tribunal which was on appeal, costs shall be assessed against the respondent before the Court of Appeals. **When the decision of the Supreme Court has the effect of affirming or reversing in part or vacating the judgment of the lower court or tribunal which was on appeal, costs shall be allowed only as ordered by the Supreme Court.**

Rule 242(j)(1), SCACR (bold added); see also, Rule 222(a), SCACR. In South Carolina, costs are regarded as in the nature of penalties, and statutes providing for them are strictly construed. See generally, Oliver v. South Carolina Dept. of Highways and Public Transp., 309 S.C. 313, 422 S.E.2d 128 (1992); South Carolina Public Service Authority v. Spearwant Liquidating Co., 201 S.C. 207, 209, 22 S.E.2d 252, 253 (1942) (noting that costs “have always been regarded in this state as in the nature of penalties; hence statutes allowing them are strictly construed, and the party who claims the right to tax them against another must be able to point to some statute which allows

him to do so.”). Petitioner should not be penalized for pursuing an appeal that reversed both grounds for the Court of Appeals’ decision.

This Court overturned the analysis and conclusion of the Court of Appeals and lower court that there was neither proof of damages nor proximate cause sufficient to support the jury verdict. This Court affirmed the Court of Appeals’ decision only “in result.” Because this Court did not fully affirm the analysis of the Court of Appeals (or the lower court), but instead rejected their analysis of the issues of damages and proximate cause, the County is not entitled to an award of fees and costs as a matter of right. Road, LLC prevailed on the only two issues decided by the Court of Appeals, thereby establishing that its appeal was not only meritorious but correct even though it did not succeed in changing the outcome.

This case began in 2017 and has been extensively litigated. It involves both complex factual circumstances and legal issues. It included a week-long jury trial, resulting in the verdict in Petitioner’s favor. The lower court set aside the verdict on at least two grounds that were incorrect yet affirmed by the Court of Appeals. Petitioner was successful in this Court on the issues that were directly briefed and constituted the basis for the decision of the Court of Appeals. Under these circumstances, Petitioner respectfully submits this Court should refrain from awarding any attorney’s fees and costs related to the appeal, particularly because this Court’s Opinion sided with Petitioner’s argument as to the two significant issues improperly decided by the Court of Appeals and lower court.

**CONCLUSION**

For these reasons, the County's motion should be denied.

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June 19, 2024

Charleston, South Carolina