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Jul 26 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

THE HONORABLE WALTON J. MCLEOD, CIRCUIT COURT JUDGE

Appellate Case No. 2022-001060

Emily P. Smith and Emily P. Smith and Associates, LLC, Appellants,

v.

Robert T. Smith, Southern Collection, LLC, Southern Collection
Brokerage, LLC, Terrence Smith and Associates, LLC, Robert B. Smith
and Sherry C. Smith, Respondents.

RESPONDENTS' MOTION FOR COSTS

Respondents Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terrence Smith and Associates, LLC, Robert B. Smith and Sherry C. Smith (collectively "Respondents") moves for taxation for costs on appeal under Rule 222(a) of the South Carolina Appellate Court Rules against Petitioners Emily P. Smith and Emily P. Smith and Associates, LLC.

This was an appeal from the trial court's dismissal of Appellants' complaint and denial of Appellants' Emergency Motion for Appointment of Receiver. On appeal before the Court of Appeals, Appellants contended the trial court erred in (1) concluding that Southern Collection, LLC was marital property; (2) granting Respondent's Rule 12(b)(1), SCRC, motion; (3) granting Respondents' Rule 12(b)(6), SCRC, motion; (4) denying Appellants' Emergency Motion for Appointment of Receiver; (5) denying Appellant's Rule 38(a) right to trial by jury; and (6)

dismissing the complaint as it relates to Robert B. Smith and Sherry C. Smith. The Court of Appeals affirmed the trial court's decision. Respondents now seek costs and an attorney's fee award for successfully upholding the trial court's decision before the Court of Appeals.

Rule 222(a), SCACR, provides in relevant part, "costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed." Further, Rule 222(b), SCACR, provides that "the party shall be entitled to recover an attorney's fee in the amount which shall be set by the Supreme Court." Because the trial court's decision was affirmed on appeal by the Court of Appeals, Respondents are entitled to an attorney fee under Rule 222(b), SCACR.

Accordingly, Respondents respectfully request an Order directing the total amount set forth in the Itemized Statement of Costs attached, \$2,550.00, be added to the Remittitur.

Respectfully submitted,

/s/ Mark B. Goddard

Mark B. Goddard (S.C. Bar No. 73965)

Thorne Barret (S.C. Bar No. 16973)

John B. Kelchner (S.C. Bar No. 13589)

Lindsey M. Behnke (S.C. Bar No. 105719)

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ATTORNEYS FOR RESPONDENTS

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v.

Robert T. Smith, Southern Collection, LLC, Southern Collection
Brokerage, LLC, Terrence Smith and Associates, LLC, Robert B. Smith
and Sherry C. Smith, Respondents.

PROOF OF SERVICE

I, Emily McFadden, an employee of Turner Padgett Graham & Laney, P.A., do hereby certify that on July 26, 2024, I served a copy of the **Respondents' Motion for Costs and Form 17: Itemized Statement of Costs** in the above-referenced case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

Desa Ballard, Esquire
Harvey M. Watson, III, Esquire
Haley Hubbard, Esquire
BALLARD & WATSON
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

July 26, 2024
Columbia, South Carolina

s/ Emily M. McFadden
Emily M. McFadden, Legal Assistant

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SC Court of Appeals

Mark B. Goddard

REPLY TO
E-Mail: EMcFadden@TurnerPadget.com
Writer's Direct Dial: 803-227-4334
Writer's Direct Fax: 803-400-1542

July 26, 2024

Via E-Mail: ctappfilings@sccourts.org

The Honorable Jenny Abbot Kitchings
Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

Re: Emily P. Smith, et al. v. Robert T. Smith, et al.
Appellate Case No.: 2022-001060

Dear Judge:

Please find enclosed for filing the **Respondents' Motion for Costs, Form 17: Itemized Statement of Costs and Proof of Service** in connection with the above referenced matter. By copy of this letter and as evidenced by the Proof of Service, I am serving the same to the Appellants. Should you have any questions or need anything additional, please do not hesitate to contact me.

Very truly yours,

TURNER PADGET GRAHAM AND LANEY P.A.

s/ Mark B. Goddard

Mark B. Goddard

MBG/emm



The Honorable Jenny Abbot Kitchings

July 26, 2024

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cc: Mark Goddard, Esq.
John Kelchner, Esq.
Lindsey Marie Behnke, Esq.
R. Hawthorne Barrett, Esq.
Harvey Watson, Esq.
Desa Ballard, Esq.
Haley Hubbard, Esq.
Terence Smith