

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**Aug 19 2024**

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY  
Edward W. Miller, Circuit Court Judge

Appellate Case No. 2022-001202  
Case No. 2015-CP-10-0020

Steven M. Bernard and Deborah J. Bernard, On Behalf of  
Themselves and all others Similarly Situated,..... Petitioners,

v.

3 Chisolm Street Homeowners, Association, Inc., ..... Respondent.

**REPLY MEMORANDUM IN SUPPORT OF  
MOTION FOR COSTS ON APPEAL**

The Respondent 3 Chisolm Street Homeowners Association, Inc., as the prevailing party, has filed a motion pursuant to Rule 222(d) and Rule 242(j), SCACR, for an award of costs on appeal in the amount of \$5,168.74. The Petitioners Steven M. Bernard and Deborah J. Bernard, on behalf of themselves and all others similarly situated, oppose the award of costs on appeal based on an argument that consists only of a re-argument of the merits of the case on which they lost at the

trial court level and again on appeal. The Petitioners suggest that the Respondent should not be “rewarded by granting of Costs on Appeal,” but in reality, the award of costs to the prevailing party is by no means a “reward.”

Rule 222(a), SCACR, provides that "costs shall be taxed against appellant when the appeal is dismissed or judgment on appeal is affirmed." *See*, Rule 222(a), SCACR. Here, the summary judgment in favor of the Respondent was affirmed, thereby entitling the Respondent to costs on appeal.

Rules 222 and 242 do not expressly set forth any exceptions to the rule that the prevailing party is entitled to an award of costs on appeal. Those rules certainly do not include an exception based upon the merits of the appeals that were lost by the Petitioners.

Accordingly, the Petitioners – who are not claiming any type of indigency or financial hardship – should not be allowed to avoid their liability, like every other party who chooses to appeal, for the costs on appeal awardable under Rules 222 and 242. Quite simply, there are consequences to filing an appeal – there is no absolute right to an appeal without liability for costs. Here, the Petitioners chose to appeal twice, first to the Court of Appeals and then to the Supreme Court, and they did not prevail. Those appeals resulted in costs incurred by the Respondent – costs much greater than they are seeking or can seek under Rules 222 and 242. The Petitioners cannot now dispute that the Respondent is a prevailing party and, as such, is entitled under our appellate rules and practice to an award of costs. For

these reasons, the Court is respectfully requested to grant the Respondent's motion for costs on appeal.

Respectfully submitted,

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August 19, 2024