

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable J. Cordell Maddox, Jr.  
Circuit Court Judge

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Feb 18 2025

S.C. SUPREME COURT

Opinion No. 2024-UP-114 (S.C. Ct. App. filed April 3, 2024)  
Case No. 2016-CP-02-00263  
Appellate Case No. 2024-001037

Robin Napier, individually and on behalf of all others similarly situated, Petitioner-Respondent,

v.

Mundy's Construction, Inc. d/b/a Mundy Construction, Respondent-Petitioner.

**PETITIONER-RESPONDENT'S MOTION FOR COSTS**

COMES NOW, the Respondent-Petitioner, and respectfully moves this Court for an award of attorneys' fees and costs as the prevailing party under Rule 222, SCACR.

Respondent-Petitioner (hereinafter "Napier") was the Appellant in the Court of Appeals. In the Court of Appeals, Napier prevailed in reversing a significant portion of the Trial Court's decision.

The Trial Court initially found that Napier and the Plaintiff Class had sustained damages totaling \$2,364,476.00, consisting of \$1,902,965.00 in repair costs and \$461,511.00 in loss of use. However, the Trial Court applied an unsupported reduction for "wear and tear", ultimately lowering the damage award to \$240,000.00.

The Court of Appeals agreed with Napier, holding that the wear and tear deduction was improper, and reversed that portion of the Trial Court's decision. The COA's ruling rested on two

independent grounds:

1. Mundy's Construction ("Mundy's") failed to prove wear and tear at trial.
2. Mundy's had not pled wear and tear as a defense.

On cross-petitions for Writ of Certiorari, the Supreme Court sustained the Court of Appeal's reversal of the wear and tear reduction. While the Supreme Court clarified that Mundy's was not required to plead wear and tear as an affirmative defense under Rule 8(c) of the South Carolina Rules of Civil Procedure, it nonetheless failed to establish evidence of wear and tear at trial. Consequently, the Supreme Court affirmed the Court of Appeal's decision to remand the case for recalculation of damages, ensuring that the wear and tear depreciation would not be factored into the final award.

Given that the Trial Court's improper wear and tear deduction amounted to approximately \$2.4 million, its reversal will likely result in a final judgment significantly exceeding the original \$240,000 award.

Under any scenario, Napier is the prevailing party and is therefore entitled to an attorney fee award of \$2,500.00, as documented in the attached sworn itemized costs, in accordance with Rule 222(d), SCACR.

JUSTIN O'TOOLE LUCEY, P.A.

/s/Justin Lucey

Justin O'Toole Lucey (SC Bar No. 15438)

Anna McCann (SC Bar No. 102314)

415 Mill Street

Mount Pleasant, SC 29464

Telephone: (843) 849-8400

*Attorneys for Petitioner-Respondent*

Charleston, SC  
February 17, 2025

Other Counsel of Record

Carmen Ganjehsani, Esquire  
David A. Anderson, Esquire  
James B. Roby, III, Esquire  
Richardson, Plowden & Robinson, PA  
P.O. Drawer 7788  
Columbia, SC 29202  
[cganjehsani@richardsonplowden.com](mailto:cganjehsani@richardsonplowden.com);  
[jrobey@RichardsonPlowden.com](mailto:jrobey@RichardsonPlowden.com);  
[danderson@richardsonplowden.com](mailto:danderson@richardsonplowden.com)  
*Attorneys for Respondent-Petitioner*