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S.C. SUPREME COURT

**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

APPELLATE CASE NO. 2024-001037
CIVIL ACTION NO. 2016-CP-02-00263

Opinion No. 2024-UP-114 (S.C. Ct. App. filed April 3, 2024)

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

PETITIONER-RESPONDENT,

versus

Mundy's Construction, Inc. d/b/a Mundy Construction,

RESPONDENT-PETITIONER.

**RESPONDENT-PETITIONER'S REPLY TO
PETITIONER-RESPONDENT'S RETURN TO THE MOTION FOR COSTS**

The Respondent-Petitioner, Mundy's Construction, Inc. d/b/a Mundy Construction, moved to be awarded costs against the Petitioner-Respondent under Rules 222 and 242(j), SCACR and also objected to Petitioner-Respondent's Motion for Costs in a Return filed with this Court on February 27, 2025. Petitioner-Respondent has objected to Mundy Construction's Motion for Costs, and Mundy Construction hereby responds in reply as follows:

In its reply, Petitioner-Respondent asserts that because this Court's opinion had the effect of affirming the Court of Appeals' opinion with a modification, only Petitioner-Respondent is entitled to costs under the South Carolina Appellate Court Rules. Under Rule 242(j)(1), however, "[w]hen 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." The decision of this Court had the effect of both affirming and reversing in part the circuit court's decision as the opinion left undisturbed the circuit court's ruling that recovery for sixty-two (62) of the townhomes was barred by the applicable Statute of Repose, but then also remanded to the circuit court for a recalculation of damages for the remaining twenty-four (24) townhomes. Therefore, under the Appellate Court Rules, costs are not automatically allowed to either party; it will be in this Court's discretion to determine the allowance of costs.

As set forth in its Motion for Costs and Return to Petitioner-Respondent's Motion for Costs (see Return attached as Ex. "A"), Mundy Construction requests this Court to use its discretion to determine that Mundy Construction was the prevailing party in the appeal. The appeal resulted in the affirmance in favor of Mundy Construction of the denial of recovery to the Petitioner-Respondent of over \$6 million in claimed damages (damages denied for the 62 townhomes plus punitive damages denied). Certainly, under these facts, Mundy Construction cannot be deemed a losing party and be required to bear the costs of Petitioner-Respondent's appeal while recovering none of its incurred costs for successfully defending on appeal the circuit court's ruling as to the Statute of Repose. See Dill v. Lumbermens Mutual Ins. Co., 215 S.C. 216, 220, 54 S.E.2d 787, 789 (1949) ("Were the plaintiffs the 'losing party' in this court

when they came out of it with all of their \$1100 judgment except \$50? We do not think so; hence we shall have to hold that they are entitled to tax against defendant their statutory costs on appeal.”).

Accordingly, as the prevailing party, Mundy Construction requests this Court to grant its Motion for Costs as stated in its Motion and correspondingly deny Petitioner-Respondent’s Motion for Costs for the reasons set forth in Mundy Construction’s Return.

Respectfully submitted,

/s Carmen V. Ganjehsani

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MUNDY CONSTRUCTION

March 13, 2025.