

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GEORGETOWN COUNTY OCT - 7 2013
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge S.C. Supreme Court

Opinion No. 4923 (S.C. Ct. App. filed December 21, 2011)

Christopher Price, Claimant,

vs.

Peachtree Electrical Services, Inc. and
Builders Mutual Insurance Company,
Employer/Carrier, Petitioners,

vs.

Bob Wire Electric, Inc., self-insured Employer,
through South Carolina Home Builders Association SIF Respondents.

RETURN TO MOTION FOR COSTS AND FEES

Petitioners, Peachtree Electrical Services, Inc. and Builders Mutual Insurance Company, by and through their undersigned counsel, hereby respectfully submit the following Return to the Respondents' Motion for Costs.

I. RESPONDENTS' MOTION FOR COSTS IS PREMATURE.

At the outset, Respondents' Motion for Costs is premature. Petitioners' Petition for Rehearing relating to this Court's recently issued Opinion is not due to

be filed until October 10, 2013. Accordingly, no remittitur has been issued in this case. Nonetheless, Respondents' filed their Motion for Costs on or about September 25, 2013 – well before Petitioners' time period in which to file their Petition for Rehearing has expired, and while the Court's Opinion is still subject to any modification which may be occasioned by Respondents' Petition for Rehearing. Rule 242, SCACR, which governs petitions for certiorari to this Court, allows for recovery of certain costs upon motion, but any such motion is not to be made until after – specifically, within fifteen days after – the remittitur has been issued. Since the Opinion is still subject to rehearing no remittitur has been filed, and Respondents' Motion for Costs is premature and should be dismissed.

II. RESPONDENTS SEEK TO RECOVER COSTS OF THE UNDERLYING ACTION WHICH ARE NOT AUTHORIZED BY RULE 222(b), SCACR.

Respondents' Motion for Costs seeks to recover the costs of numerous deposition transcripts, filing fees and hearing transcripts, all of which relate to proceedings before and depositions taken in connection with proceedings before various administrative tribunals and lower courts – all of which occurred well before any appeal to the Court of Appeals or to this Court was undertaken by either party. Moreover, none of the deposition transcripts are relevant to any of the issues on appeal to the Court of Appeals, or to this Court, and in fact aside from six pages from one of the transcripts, none of the transcripts were even included in the Record on Appeal. Respondents essentially seek to recover all costs they have incurred in this action to date, including all filing fees with the lower courts and administrative tribunals and the costs of all deposition transcripts relating proceedings before the

lower courts and tribunals. Recovery of these costs is clearly beyond the scope of Rule 222 pursuant to which Respondents' Motion is made.

Rule 222(b) specifically sets forth those costs which are recoverable on appeal. Recoverable costs relevant to this appeal are expressly limited to the filing fee for the Notice of Appeal, the cost of the court reporter's transcript (for the order subject to appeal), the cost of printing the Record on Appeal and the cost of printing final briefs. Nowhere does the Rule provide for recovery of costs for deposition transcripts for depositions taken in connection with the administrative and lower court proceedings. Nowhere does the Rule provide for recovery of costs for hearing transcripts for hearings before administrative tribunals before this matter even came before the Circuit Court. These costs are simply not authorized by Rule 222 which sets out with particularity those costs which are recoverable *in connection with an appeal*.

"Recovery under [Rule 222] is clearly limited to costs incurred *in pursuing the appeal*." Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 384, 559 S.E.2d 348, 351 (Ct. App. 2001) (emphasis added). Aside from a total of six pages from one of the deposition transcripts, none of the deposition transcripts were even included in the Record on Appeal.¹ It is therefore not even plausible that the cost of these

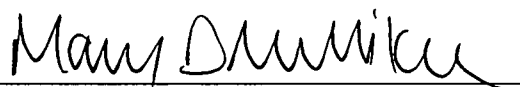
¹ Even if, for the sake of argument only, the deposition transcripts in question had been included in the Record on Appeal, the cost of these transcripts still would not be recoverable since the transcripts were obviously unnecessary to the decision by the appellate courts on the issues presented on appeal, which were primarily issues of law and clearly decided without the need for any of these transcripts. See Able v. Pilot Life Ins. Co., 186 S.C. 26, 194 S.E. 628 (1938) (affirming the lower court's order but holding respondent responsible for costs for transcripts which were unnecessary to the decision of the court on the issues presented); see also Gathings v. Great Atlantic & Pacific Tea Co., 168 S.C. 385, 167 S.E. 652 (1933) (holding that it was unnecessary to include certain testimony in the Record on Appeal and that respondent must therefore bear those costs).

deposition transcripts was incurred in pursuit of this appeal. Likewise, it cannot be argued that the cost of the transcripts of hearings before the administrative tribunals, well before this case even came before the Circuit Court, were *in pursuit of this appeal*. This is simply not an opportunity for Respondents to recover all costs they have incurred to date in this action, which has spanned the course of seven years; any costs recoverable in this action are strictly limited to those incurred in pursuit of this appeal, and which were actually relevant to the issues presented on appeal.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court deny Respondents Motion for Costs.

Respectfully submitted,



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October 7, 2013

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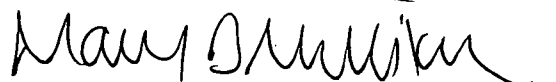
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PROOF OF SERVICE

I certify that I have served a copy of the **Return to Motion for Costs and Fees** on the Respondents by depositing a copy of same in the United States Mail, first-class postage prepaid, on October 7, 2013, addressed to their attorney of record, Kirsten L. Barr, Trask & Howell, L.L.C., P.O. Box 2167, Mt. Pleasant, South Carolina, 29465.



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