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May 19 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Case No.: 2020-CP-10-00209  
Appellate Case No.: 2020-001030

Appeal from Charleston County  
Court of Common Pleas, Ninth Judicial Circuit  
Hon. Bentley D. Price, Circuit Court Judge

Maybank 2754, LLC, .....Appellant,

v.

Eugene Zurlo, Individually and as Co-Trustee of the Eugene J. Zurlo Living Trust Dated December 11, 1997; 1776, LLC; Beach Fenwick, LLC; The Beach Company; Seamon, Whiteside & Associates, Inc.; Penny Creek Associates, LLC; John Doe and Mary Roe ..... Respondents.

RETURN IN OPPOSITION TO MOTION TO TAX COSTS  
BY RESPONDENTS BENCH FENWICK, LLC & THE BEACH COMPANY [SIC]

Respondents Beach Fenwick, LLC and The Beach Company [sic] (collectively, the “Beach Respondents”), pursuant to Rule 222(d) of the South Carolina Appellate Court Rules, respectfully submit this Joint Return in Opposition to Appellant’s Motion to Tax Costs, filed on May 8, 2025 (“Motion”). For the reasons set forth herein, Appellant’s Motion should be denied, or in the alternative, the costs and fees Appellant requests must be reduced.

“[I]t is within this Court’s discretion whether to award fees and costs under Rule 222” of the South Carolina Appellate Court Rules. *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187,

199, 750 S.E.2d 78, 84 (2013). Respondents did not file the appeal, and it would be inequitable to tax them for the costs and fees for this Court reversing a decision made by the Circuit Court. Therefore, this Court should use its discretion in denying Appellant's request for costs and fees. Further, the only basis upon which Appellant's request for costs and fees stands is that it was the prevailing party. However, as noted in this Court's Opinion on August 7, 2024, Appellant filed two appeals and the First Appeal, as defined by this Court, was immaterial as its outcome "would have no impact on whether summary judgment is proper." Therefore, this Court should not construe Appellant as the prevailing party relative to the First Appeal. Accordingly, the costs of the two appeals should be offset against each side as Appellant only arguably prevailed on one out of the two appeals it filed.

At minimum, the total costs and fees requested by Appellant must be reduced. First, regarding Appellant's requests for \$2,500 in fees regarding the denial of the writ of certiorari by the South Carolina Supreme Court, Rule 242(j) of the South Carolina Appellate Court Rules is clear that any fees or costs are only eligible to be assessed when a writ or certiorari is granted by the South Carolina Supreme Court. Because the writ of certiorari was not granted, Appellant is not entitled to \$2,500 requested under Rule 242(j) of the South Carolina Appellate Court Rules. Additionally, any such request should be directed towards the South Carolina Supreme Court rather than the South Carolina Court of Appeals, the latter having no authority to award costs and fees relative to a matter in the purview of the Supreme Court. *See* Rule 242(j)(5) ("Costs under this Rule shall be taxed by the Supreme Court." (emphasis added)). Second, regarding Appellant's request for \$2,920.33 in costs of printing or copying the Record on Appeal, such astronomical costs are facially unreasonable. Not only do they exceed the maximum amount of attorney's fees set at \$2,500 by the Supreme Court, but at a reasonable five-cent-per-page rate for black-and-white

copies, the printing of seven copies<sup>1</sup> of the Record on Appeal, consisting of two thousand and twenty (2,020) pages, should only cost approximately \$707.

Based on the foregoing, the Beach Respondents respectfully request this Court deny Appellant's requests for costs and fees, or in the alternative, to significantly reduce the amounts requested by Appellant.

Respectfully submitted,

s/ Cheryl D. Shoun

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May 19, 2025  
Charleston, South Carolina

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<sup>1</sup> Pursuant to Rules 210 and 267 of the South Carolina Appellate Court Rules, only one copy of the Record on Appeal is necessary initially. However, here, the Court of Appeals requested six additional copies of the Record on Appeal in a letter dated December 10, 2021.

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PROOF OF SERVICE

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I certify that I have caused to be served the foregoing Return in Opposition to the Motion to Tax Costs filed by the Beach Respondents on the following parties' counsel, at the addresses listed below by e-mail on May 19, 2025.

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*s/ Cheryl D. Shoun*

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