

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. William P. Keesley, Circuit Court Judge

Case No. 2021-CP-42-02473

Appellate Case No. 2023-001343

Eugene W. Villanova and Ruth L. Villanova, by and through Karen Lynn Ward, their attorney in fact, and on behalf of those similiary situated, Respondents,

v.

Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge, Petitioners.

PETITIONER’S RETURN TO RESPONDENTS’ MOTION FOR SANCTIONS

Jonathan G. Roquemoire (SC Bar No. 68274)
Joshua D. Shaw (SC Bar No. 77835)
Paul E. Allen, Jr. (SC Bar No.: 104062)
Hedrick Gardner Kincheloe & Garofalo LLP
1230 Main Street, Suite 325
Columbia, SC 29201

Attorneys for Petitioners

ARGUMENT

Appellants Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge (collectively, “Appellants”) respectfully request this Court deny Respondents’ Motion for Sanctions against Appellants.

South Carolina’s Rules of Appellate Practice provide two situations in which a prevailing party may seek and recover costs. Rule 222, SCACR, allows for a party to recover specific costs that it has incurred in defending a judgment on appeal, and the recoverable costs are set by order of our Supreme Court. On the other hand, Rule 269, SCACR, provides that a party may move for sanctions where an appeal is “frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules. . .” Respondents in this case seek costs well in excess of those allowed by Rule 222, SCACR, on the ground that Appellants “knowingly filed improper frivolous appeals in an attempt to prolong and delay the underlying litigation.” Yet Respondents do not offer any evidence whatsoever that Appellants position was an attempt to prolong and delay the underlying litigation other than its cursory position that such appeals are an “obvious defense tactic.” Respondents’ Motion for Sanctions should be denied.

This Motion arises from a denied Petition for Certiorari in which Appellants sought to prove the full language of an arbitration provision by an objective method because it could not produce a full written copy of the applicable arbitration provision. (*See* Pet. for Cert.) Respondents appear to assert that this Petition was frivolous because it was ultimately denied. Respondents misapprehend the meaning of Rule 242, SCACR, which provides five considerations governing the Supreme Court’s review of decisions by the Court of Appeals. The considerations outlined in Rule 242 are “neither controlling nor fully measuring the Supreme Court’s discretion or power to grant review in general.” In other words, the considerations in Rule 242 are **not** the only five

grounds for which the Supreme Court will consider certiorari. Put simply, there is no authority for the proposition that an appeal is frivolous if certiorari is not granted.

Appellants pursued their appellate rights in this litigation and complied with the South Carolina Appellate Court Rules in doing so. Respondents did not file a motion to dismiss the appeal for failure to comply with the rules at any point in the appellate process. While Respondents did ask Appellants to withdraw the appeal on Christmas Day 2024, Respondents did not offer any legal authority that would control the disposition of Appellants' appeal. Instead, Respondents made the cursory allegation that Appellants' appeal was "frivolous, without merit, and intended for delay only." Appellants submit that its appeal was meritorious, and any delay was the natural result of the appellate process. Respondents' motion for sanctions should be denied.

CONCLUSION

Appellants Pacifica Skylyn, LLC, d/b/a Pacifica Senior Living Skylyn, Etros, LLC, and Matthew Arledge request this Court deny Respondents' Motion for Sanctions under Rule 242, SCACR.

Respectfully submitted,

HEDRICK GARDNER KINCHELOE & GAROFALO LLP

s/Paul E. Allen, Jr.

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v.

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CERTIFICATE OF SERVICE

It is hereby certified that the Appellants' Return to Respondents' Motion for Sanctions in the above-captioned case has been served on the following parties via e-mail, on June 2, 2025:

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