

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Jun 09 2025

S.C. SUPREME COURT

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas
Fifteenth Judicial Circuit

The Honorable Benjamin H Culbertson, Circuit Court Judge

Civil Action No. 2018-CP-22-00956

Appellate Case No.: 2023-001462

Laura Kopchynski.....Petitioner

v.

Rory M. Isaac and Kimberly J. Isaac Respondents.

**RETURN OPPOSING PETITIONER'S
MOTION FOR COSTS ON APPEAL**

Respectfully submitted,

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Respondents

/s George W. Redman, III
George W. Redman, III, Esq., SCB # 72365
GRedman@BellamyLaw.com

June 9, 2025.

Other Counsel of Record:
Steven R. Kropski
Earhart Overstreet, LLC
P.O. Box 225258
Charleston, SC 29413
(843) 972-9400
Steve@EarhartOverstreet.com
Attorneys for Petitioner

STATEMENT OF THE RELEVANT FACTS

On Monday, July 23, 2018, Respondents (almost seven (7) years ago), Rory and Kimberly Isaac, purchased the personal residence of Defendants Thomas and Jackie Onions, located in the Litchfield Plantation of Pawleys Island. Petitioner Laura Kopchynski was the Onions' realtor. The Onion's residence had a history of flooding that was not disclosed. The Onions and Kopchynski both filed motions for summary judgment as to all of the Isaacs' claims. After the Circuit Court held a hearing on July 26, 2019, the Honorable Benjamin H. Culbertson denied the Onions' motion for summary judgment, and granted Kopchynski's motion for summary judgment.

On July 12, 2023, the Court of Appeals affirmed in part, reversed in part, and remanded, holding that "on the record before us, the Isaacs presented enough evidence for two of their claims to survive summary judgment." The Isaacs' were originally the Appellants, and they initially prevailed against the dismissal of their negligent misrepresentation and Residential Property Condition Disclosure Act claims against Kopchynski. (See S.C. Code Ann. § 27-50-40(A)(4) (2007 & Supp. 2022)).

On April 23, 2025, this reversed the Court of Appeals, finding that Petitioner had provided some notice of crawl space moisture and repairs. Importantly, this Court also resolved a novel legal question, holding that the Residential Property Condition Disclosure Act does not create a private cause of action against real estate licensees. On May 29, 2025, Counsel for Petitioner filed their Motion for Costs on Appeal, upon the grounds that Petitioner was a prevailing party under Rule 222 of the *South Carolina Appellate Court Rules*.

The Respondents respectfully submit this Return in Opposition seeking to oppose the request for costs or to seek a reduction of the amount of costs to be awarded on the grounds that this Honorable Court's decision reversed the Order of the Court of Appeals, and further that this Appeal involved a novel question of law that required appellate clarification.

STANDARD OF REVIEW AND ARGUMENT

SCACR Rule 222(a) provides that “Unless otherwise ordered by the appellate court” costs shall be taxed in favor of the prevailing party. Thus, in South Carolina, appellate courts retain broad discretion to deny or adjust costs based on the circumstances of the case. For example, in cases involving important public policy and unsettled legal questions, this Court may decline to award costs so as not to discourage legitimate litigation. Further, where the results of the litigation are mixed, the court has discretion to determine that there is no prevailing party for purposes of awarding costs.

This Honorable Court confronted and resolved a novel question of law that required appellate clarification regarding Isaacs’ claims under the Residential Property Condition Disclosure Act: “[W]e hold the Isaacs' claim for violation of the Disclosure Act failed because the legislature did not intend for purchasers to have a private cause of action against the listing agent for violation of the Act.” Thus, this Appeal involved a novel question of law under the Residential Property Condition Disclosure Act which has now been resolved clearly. Under these circumstances, the award of costs would act as a deterrent and disincentive to bringing legitimate legal questions to this Honorable Court.

As to the Isaacs’ Negligent Representation claim against Petitioner, this Court noted the competing duties of each party. This Honorable Court first noted that “As a real estate licensee, Kopchynski owed the Isaacs a duty to be truthful. *See* S.C. Code Ann. § 40-57-350 (G)(1) (Supp. 2024).” This Court then noted, “the Isaacs had a duty to inspect the Property. *See* § 27-50-80.”

After noting the competing duties of the Parties, this Court held:

Taken together, these sections provide that a real estate licensee does not have a duty to inspect or investigate the physical condition of a piece of property for the purpose of confirming or denying statements made by a seller in a disclosure statement. *Chastain v. Hiltabidle*, 381 S.C. 508, 519, 673 S.E.2d 826, 832 (Ct. App. 2009). Rather, the Legislature places the duty of performing such an inspection or investigation squarely on the shoulders of the buyer.

Where the results of the litigation are mixed, the court has discretion to determine that neither side prevailed entirely, and thereafter deny or apportion costs.

CONCLUSION / PRAYER FOR RELIEF

Given the novel question of law and the public interest that required appellate clarification, as well as the mixed results in the appellate courts of South Carolina, the Respondents pray this Honorable Court will Order each party to bear its own costs on Appeal pursuant to Rule 222, SCACR.

Respectfully Submitted,

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EPPS, GRAVELY & BOWERS, P.A.**

P.O. Box 357

Myrtle Beach, SC 29578

(843) 448-2400

Attorneys for Respondents, Rory & Kim Isaac

/s George W. Redman, III

George W. Redman, III, Esq., SCB # 72365

GRedman@BellamyLaw.com

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