

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

NOV 21 2013

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.

PETITION FOR REHEARING

Peachtree Electrical Services, Inc. and Builders Mutual Insurance Company respectfully petition this Court for a rehearing, pursuant to Rule 221(a) of the South Carolina Rules of Appellate Practice, on the Motion for Costs filed by Respondents on or about September 25, 2013. The grounds for this Petition are that the Court's Order on this Motion, filed on November 7, 2013, allowed Respondents to recover costs for numerous deposition and hearing transcripts that were not included in the

Record on Appeal and also for a filing fee paid to the Circuit Court, none of which costs are recoverable under Rule 222(b). In addition, it appears that one of the hearing transcripts (which was not included in the Record on Appeal) was accounted for *twice* in Respondents' Motion for Costs. The costs in Respondents' Motion for Costs which are not properly recoverable under Rule 222(b) are identified as follows:

- Cost of Court Reporter's Transcript (Claimant's August 30, 2005 deposition) totaling \$279.20;
- Cost of Court Reporter's Transcript (Robert Conroy's October 12, 2005 deposition) totaling \$61.10;
- Cost of Court Reporter's Transcript (Claimant's March 18, 2008 deposition) totaling \$359.00;
- Cost of Court Reporter's Transcript (April 23, 2008 Single Commissioner Hearing) totaling \$100.60;
- Cost of Court Reporter's Transcript (April 23, 2008 Single Commissioner Hearing) totaling \$104.00;
- Cost of Court Reporter's Transcript (Dr. William Mills August 4, 2008 deposition) totaling \$180.40; and
- Filing Fee for Appeal to Circuit Court in the amount of \$150.00.

The total of the costs not properly recoverable is \$1,234.30.

Recovery of costs for transcripts of depositions and hearings which were not included in the Record on Appeal is not authorized by Rule 222(b) or by the case law interpreting this Rule. See, e.g., Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 384, 559 S.E.2d 348, 351 (Ct. App. 2001); see also 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

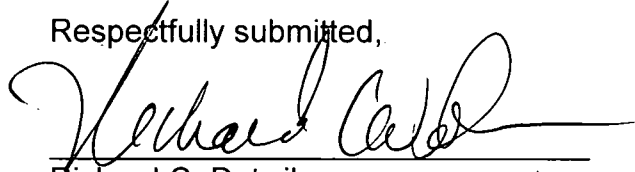
the decision of the court on the issues presented, despite the fact that they were presumably included in the Record on Appeal); Gathings v. Great Atlantic & Pacific Tea Co., 168 S.C. 385, 167 S.E. 652 (1933) (holding that even though certain testimony was included in the Record on Appeal, that testimony was irrelevant to the appeal, and therefore respondent was required to bear those costs).

In this case, Respondents seek in their Motion to recover the costs of six transcripts which were not even included in the Record on Appeal, as opposed to matters that were improperly included as in the cases cited above. Inarguably these transcripts were not necessary to determination of the issues on appeal in this matter when they were not even included in the Record on Appeal. Respondents further seek recovery of a filing fee paid in connection with a prior appeal to the Circuit Court, when Rule 222(b) specifically only allows recovery fo the filing fee paid in connection with the filing of the Notice of Appeal to the Court of Appeals. Recovery of these costs is simply not permitted, and not proper, under Rule 222(b), SCACR. Again, the purpose of recovery of costs under Rule 222(b) is not to allow a prevailing party to recover *all* costs they have incurred to date in the action, but instead to allow recovery of those costs that were incurred *in pursuit of the appeal*.

For the reasons set forth above, Petitioners respectfully request this Court reconsider its Order granting Respondents' Motion for Costs and grant this Petition for Rehearing.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



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Columbia, South Carolina

November 21, 2013

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Benjamin H. Culbertson, Circuit Court Judge

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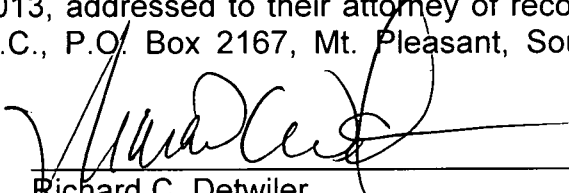
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PROOF OF SERVICE

I certify that I have served a copy of the **Petition for Rehearing** on the Respondents by depositing a copy of same in the United States Mail, first-class postage prepaid, on November 21, 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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