

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Bentley D. Price, Circuit Court Judge

Circuit Court Case No. 2016-CP-07-2541
Court of Appeals Appellate Case No. 2022-000231
Supreme Court of South Carolina Appellate Case No. 2025-000436

Forum Benefits, LLC,

Plaintiff-Respondent,

v.

Brian Bannon and Assured Partners, NL,

Defendants – Petitioners.

PETITIONERS' RETURN TO RESPONDENT'S MOTION FOR COSTS

January 9, 2026

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Defendants/Petitioners Brian Bannon and Assured Partners, NL, (“Defendants” for ease of reference) hereby submit their Return to the Motion for Costs filed by Plaintiff/Respondent Forum Benefits, LLC (“Plaintiff” for ease of reference). Plaintiff’s Motion should be denied for several reasons. First, this Court sent down the remittitur to the Circuit Court prior to Plaintiff filing an itemized statement of costs. As a result, the issue of fees and costs should now be reserved for the Circuit Court. See Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 416, 438 S.E.2d 248, 250 (1993). Plaintiff’s primary claim is for violation of the South Carolina Trade Secrets Act, which states that the issue of attorney’s fees and costs is to be decided by the Circuit Court. S.C. Code Ann. § 39-8-80. Plaintiff’s claims for breach of contract and misappropriation of trade secrets will be retried, and the Circuit Court will have the discretion to award the prevailing party their full fees and costs. Therefore, the issue of fees and costs should be reserved for the Circuit Court after this case is retried and a jury verdict is rendered. Second, Petitioner is not entitled to seek fees and costs related to the proceedings before this Court because this Court did not issue a “decision” under Rule 242(j)(1), SCACR. Here, on December 17, 2025, the Supreme Court declined to review the case by dismissing Defendants’ Petition for Writ of Certiorari as improvidently granted. Thus, this Court did not issue a decision on the merits of the appeal. Finally, this Court should deny Plaintiff’s Motion based on the unique circumstances of this case. For these reasons and the reasons discussed more fully below, Respondent’s Motion for Costs must be denied.

RELEVANT CASE HISTORY

This case proceeded to trial on October 11, 2021. After Plaintiff presented its case in chief, the trial court granted Defendants’ motion for directed verdict on all claims and awarded Defendants their fees and costs. Plaintiff appealed this ruling to the Court of Appeals. On

December 11, 2024, the Court of Appeals reversed the ruling of the trial court. On January 9, 2025, Defendants filed a Petition for Rehearing. Defendants' Petition for Rehearing was subsequently denied. On March 7, 2025, Defendants filed a Petition for Writ of Certiorari with this Court. While the Petition was initially granted, on December 17, 2025, this Court dismissed the Petition as improvidently granted and issued a remittitur. On December 18, 2025, this Court sent down the remittitur to the Circuit Court. On December 22, 2025, the Beaufort County Clerk of Court date-stamped the remittitur as received by the Circuit Court. On December 30, 2025, after the remittitur was sent down to and received by the Circuit Court, Plaintiff filed a Motion for Costs including an itemized statement of costs with this Court seeking fees and costs for both the proceedings before the Court of Appeals and before this Court.

ARGUMENT AND AUTHORITY

A. The issue of fees and costs now rests with the Circuit Court and should be decided after a jury verdict is rendered.

This Court should deny Plaintiff's Motion because the Circuit Court now has the authority to award fees and costs after a jury verdict is rendered. Remittitur was sent back to and received by the Circuit Court before Plaintiff's Motion for Costs and itemized statement was filed. After the retrial of this case occurs, Plaintiff breach of contract claim permits the Circuit Court to award the prevailing party its full fees and costs. Similarly, Plaintiff's claim under the South Carolina Trade Secrets Act requires the Circuit Court to decide the issue of awarding fees and costs. See S.C. Code Ann. § 39-8-80 ("If (1) a claim of misappropriation is made in bad faith, (2) a motion to terminate an injunction is made or resisted in bad faith, or (3) willful misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.") An award of any fees and costs at this stage of the litigation may be inconsistent with the Circuit Court's ultimate decision on this issue after the case is retried and a jury verdict is rendered. Either party will be able to seek

its full fees and costs after the jury verdict in this case and the issue of fees and costs should be reserved for the Circuit Court to make at that time.

This result is fully supported by this Court's decision in Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412, 416, 438 S.E.2d 248, 250 (1993). In Muller, similar to the instant case, the respondent won at the Circuit Court and was awarded statutory fees. The appellant appealed the result. The Circuit Court's order was reversed, remittitur issued, and then the remittitur was sent back to the Circuit Court. The appellant subsequently moved this Court for fees under Rule 222, SCACR. In response, this Court ruled that the issue of whether to award fees under the statute was for the trial court to decide. Id. This Court ruled, "Here, attorney's fees awarded to the prevailing party under § 29-5-10 are to be determined 'by the court in which the action is brought,' i.e., Circuit Court. 'Accordingly, once this Court sent down the remittitur, [the] Circuit Court was vested with jurisdiction to determine the issue of attorney's fees under § 29-5-10.'" Id.

This Court sent down the remittitur and the Circuit Court acknowledged receipt before Plaintiff filed its Motion and itemized statement of costs. Because remittitur has been sent down and because the full award of fees and costs is to be addressed by the Circuit Court under the contract claim and trade secrets statute, any award of fees and costs should be deferred to the Circuit Court after a jury verdict is rendered. Therefore, Plaintiff's Motion should be denied.

B. Plaintiff is not entitled to fees and costs related to proceedings at the Supreme Court.

When the Supreme Court grants a writ of certiorari and issues a "decision" that effectively reverses the lower court, then the Supreme Court can award limited fees and costs to the appellant. SCACR 242(j). While the Court of Appeals reversed the trial court's decision, and this Court initially granted Defendants' Petition for a Writ of Certiorari, this Court did not issue a "decision" on the merits of the Petition. Instead, this Court dismissed the Petition as improvidently granted.

This has the same effect as the Supreme Court denying a writ of certiorari in the first place and should be treated as such. Because this Court did not issue any “decision” related to the merits of the appeal, neither Plaintiff nor Defendants can be considered the prevailing party at the Supreme Court. Therefore, under Rule 242(j), SCACR, Plaintiff cannot recover fees and costs in connection with the matter’s limited proceeding before this Court which did not result in a “decision” on the merits.

C. This Court has full discretion to deny Plaintiff’s Motion.

Even when the appellate rules allow for a limited award of fees and costs, the appellate courts still have discretion under both Rule 222 and Rule 242 to not award fees and costs depending on the circumstances of the case. SCACR 222(a) (“unless the court orders otherwise”) and SCACR 242(j)(1) (“Unless otherwise ordered”). “Notably, it is within this Court's discretion whether to award fees and costs under Rule 222.” Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013). The circumstances of this case support not awarding any fees or costs at this stage of the litigation. This case involves novel issues of law, namely whether South Carolina permits a lost document defense to the Statute of Frauds and the level of proof required to establish such defense. Also, there are significant legal issues related to the basis for a trade secret claim against an independent contractor if there is no contract. While the Court of Appeals reversed the trial court’s granting of directed verdict, ruling that the jury should have decided any factual dispute issues, it did not specifically address these legal issues. Therefore, the Circuit Court will be required to address these issues (and several other legal issues not specifically addressed by the Court of Appeals). All these issues (along with the issue of awarding fees and costs) should now be reserved for the Circuit Court after a jury verdict is rendered.

CONCLUSION

Based on the facts, arguments and authorities above, Respondent's Motion for Costs should be denied.

Respectfully Submitted,

s/Jeffrey A. Lehrer_____

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