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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Judge of the South Carolina Business Court
Case No.: 2017-CP-26-04187

Unpublished Opinion No. 2025-UP-181
(S.C. Ct. App. Filed August 20, 2025)
(Appellate Case No. 2021-000767)

C. Barry Dykes and Barbara Eisenhardt, Individually and Derivatively on Behalf of the Wild Wing
Plantation Property Owners' Association, Inc.,

Appellants,

v.

Wild Wing Company, LLC; Sunstar, LLC; Ralph R. Teal, Jr.; SLF IV/SBI Wild Wing, LLC; SLF
IV/SBI JV, LLC; SLF, IV/SBI Properties MM, LLC; SLF IV/SBI Development Holdings, LLC;
Wild Wing Residential Development, LLC; Stratford Land Manager, L.P. d/b/a Stratford Land;
Stratford Land Fund IV, L.P.; SB Investments LLC; Realstar Management, LLC; Graeme T. Black;
H. Gilford Edwards; Founders Wild Wing, LLC; Founders Group International, LLC; Dan Liu; Xian
"Nick" Dou; Rick Schultz; Rick Taylor; and Thomas Plankers,

Respondents,

Wild Wing Plantation Owners' Association, Inc.,

Nominal Defendant.

RESPONDENTS' REPLY TO APPELLANTS' RETURN

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April 8, 2026

ARGUMENT

Appellants' Return largely seeks to relitigate the merits of the case. Rather than continue to argue issues which have been fully and finally determined by the Court, the following is intended to briefly address a few specific points in response to Appellants' Return. All facts and arguments raised by Respondents in their Motions for Costs are reiterated and incorporated herein by reference.

I. Appellants misconstrue *Austin v. Stokes-Craven Holding Corp.* and Rule 222, SCACR.

Appellants assert that the Supreme Court of South Carolina confirmed an award of costs and attorney's fees is discretionary under Rule 222, SCACR, under *Austin v. Stokes-Craven Holding Corp. (Austin II)*, 406 S.C. 187, 750 S.E.2d 78 (2013).¹ Appellants' argument implies that fees should not be awarded under that discretion, but the argument misconstrues *Austin II* and the language of Rule 222.

Austin II was a second appeal involving rights to attorney's fees under a statute after the Court of Appeals denied a motion for costs and attorney's fees under Rule 222, SCACR, after a first appeal. *Austin II*, 406 S.C. at 191-92, 750 S.E.2d at 80-81. Before *Austin II*, however, the first appeal (*Austin I*) decided three years earlier involved cross appeals after a jury verdict, resulting in a decision that was affirmed in part, reversed in part, and remanded. *Austin v. Stokes-Craven Holding Corp. (Austin I)*, 387 S.C. 22, 59, 691 S.E.2d 135, 154 (2010). In *Austin II*, the losing party asked the Supreme Court of South Carolina to find that the Court of Appeals ruling denying attorney's fees under Rule 222 was dispositive as to the attorney's fees under the applicable statute. *Austin II*, 406 S.C. at 196-97, 750 S.E.2d at 83. The Court disagreed with that argument, commenting that the attorney's fee award was discretionary under Rule 222, whereas

¹ Return, p. 2

the attorney's fee award was mandatory under the statute and, therefore, the denial of attorney's fees under the appellate court rule did not foreclose an attorney's fee award under the statute. *Austin II*, 406 S.C. at 199-200, 750 S.E.2d at 84-85.

Pairing *Austin I* and *Austin II* with the language of Rule 222, SCACR, makes it clear that the attorney's fees in this appeal are not fully discretionary. Rule 222 states:

Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.

The first sentence is a mandatory presumption that costs must be awarded when the judgment is affirmed on appeal, unless the court orders otherwise. When the decision is affirmed or reversed in part, the appellate court has full discretion to award costs. Understanding that plain language of Rule 222, the comment in *Austin II* on discretion to award fees makes sense because the cost and fee request was based on a decision that was affirmed in part and reversed in part. Unlike *Austin I*, Appellants lost their case in its entirety, with the decision being affirmed. Certainly, Appellants' arguments that attempt to relitigate the case and appeal do not give the Court of Appeals a basis to "otherwise order" something different than what Rule 222 requires. Therefore, under the plain language of Rule 222, this Court should award the costs and attorney's fees as requested in each Motion for Costs.

II. Proof of payment is not required to support a Motion for Costs.

Appellants erroneously suggest that proof of payment of costs and attorney's fees is required to support a Motion for Costs.² Appellants cite no rule of law for this position. Motions

² Return, p. 3.

for Costs are governed by Rule 222, SCACR. This Rule states, “In addition, the party shall be entitled to recover an attorney’s fee in an amount which shall be set by order of the Supreme Court.” Rule 222(b), SCACR. The Rule then sets forth the requirements for seeking such an award. “If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules.” Rule 222(d), SCACR. This is the only requirement to support the Motion for Costs. Each Motion filed by the Respondents included a sworn Itemized Statement of Costs Incurred, signed by the attorney of record for that Respondent in the form prescribed by the Appendix. No further proof of payment is necessary.

III. Appellants have not paid anything while causing Respondents to incur nine years of costs and attorney’s fees.

Appellants seek to avoid the payment of the Costs on Appeal prescribed by the South Carolina Appellate Court Rules even though they have paid nothing to perpetuate this action for nine years. As stated by the Affidavit filed with Appellants’ Return, “Lyles & Associates, LLC was retained by Appellants in 2017 as a contingency fee matter.”³ The Affidavit further notes that Appellants’ attorney has received all invoices for costs and fees, including expert fees, related to this matter for the Appellants.⁴ Appellants “aggressively pursued” their baseless claims for nine years because it cost them nothing to do so. Meanwhile, Appellants forced Respondents to incur costs and attorney’s fees far in excess of the amounts Respondents now seek to recover as the prevailing parties. It would be inequitable to deprive Respondents of the costs and attorney’s fees they are entitled to recover from Appellants pursuant to Rule 222, SCACR.

³ Lyles Aff. ¶4.

⁴ Lyles Aff. ¶ 4.

CONCLUSION

For the foregoing reasons and the reasons set forth in Respondents' respective Motions for Costs, Respondents respectfully request that this Honorable Court grant the relief requested in each of their Motions for Costs.

s/ Zachary J. Crowl

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Nominal Defendant.

PROOF OF SERVICE

I certify that I have served Respondents' Reply to Appellants' Return on each of the following counsel of record via electronic mail on April 8, 2026 to the email addresses set forth below. Consistent with Rule 262(c)(3), SCACR and section (d)(1) of the Supreme Court of South Carolina's April 24, 2024 Amended Order, a copy of the email serving the document is enclosed.

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Myrtle Beach, South Carolina

April 8, 2026

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Cc: Miller, David Brunson; Carrigg, Vickie
Subject: C. Barry Dykes v. Wild Wing Company, LLC 2021-000767
Attachments: Respondents' Reply to Appellants' Return 4-8-26.pdf

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Good afternoon,

Please see attached Respondents' Reply to Appellants' Return which will be filed with the Court of Appeals today.

Thank you,
Zach



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