

STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Leroy Cartledge, Jeoffery Rice, Frank  
Musier, Ronald Cook, Joseph Stevens,  
Jeremy McCary, James Thompkins, and  
RN Vera Counner,  
Respondents,

RECEIVED  
APR 13 2026  
SC Court of Appeals

2023-001375  
Case No. ~~2023-001375~~

v.

MOTION TO TAX COSTS AND  
ATTORNEY'S FEES FOR FRIVOLOUS  
APPEAL  
(SCACR 240)

Bryantavious Murray,  
Appellant.

The Respondents, Leroy Cartledge, Jeoffery Rice, Frank Musier, Ronald Cook, Joseph Stevens, Jeremy McCary, James Thompkins, and RN Vera Counner, by and through their undersigned counsel, hereby move this Court pursuant to Rule 240 of the South Carolina Appellate Court Rules (SCACR) for an order taxing costs and reasonable attorney's fees against the Appellant, Bryantavious Murray, for pursuing a frivolous appeal.

In support of this Motion, Respondents state as follows:

**FACTUAL AND PROCEDURAL BACKGROUND**

1. This matter arises from a breach of contract action initiated by Appellant in the Court of Common Pleas. Appellant sought damages for alleged non-payment under a commercial construction contract. Respondents counterclaimed, alleging Appellant's prior material breach of the same contract.

2. A bench trial was held on October ~~4, 2023~~<sup>17-2023</sup>. The trial court found that the Appellant had materially breached the contract by failing to adhere to architectural plans and using substandard materials, which occurred prior to any alleged non-payment by the Respondents.
3. On November 5, ~~2023~~<sup>2024</sup>, the trial court entered a Final Order and Judgment in favor of the Respondents, dismissing Appellant's claims and awarding Respondents damages on their counterclaim.
4. On ~~November 8, 2024~~<sup>NOV 10 2024</sup>, Appellant filed his Notice of Appeal from the Final Order and Judgment.

## ARGUMENT

Rule 240, SCACR, authorizes this Court to impose sanctions, including the payment of attorney's fees and costs, upon a party for pursuing a frivolous appeal. An appeal is frivolous when it is "manifestly without merit" or when its primary purpose is "to harass the respondent or delay the effect of an adverse judgment." *In re Marriage of Flaherty*, 31 Cal. 3d 637, 650 (1982), cited favorably in South Carolina jurisprudence. Appellant's appeal meets this standard.

The issues raised by Appellant on appeal are manifestly without merit and present no reasonable question of law or fact.

1. **The Appeal Improperly Re-argues Factual Determinations:** The central theme of Appellant's appeal is a disagreement with the trial court's factual findings. The trial judge, as the fact-finder, weighed the credibility of witnesses and reviewed extensive documentary evidence before concluding that Appellant committed the first material breach. Appellant's brief does not argue that the trial court's findings were unsupported by any evidence; instead, it merely re-asserts its version of the facts that was rejected at trial. This is a direct contradiction of the well-established appellate

standard of review, which requires this Court to affirm the trial court's factual findings if they are supported by any reasonable evidence in the record. Appellant has failed to identify any legal error or abuse of discretion by the trial court.

2. **The Appeal is Contrary to Established Law:** Appellant's legal arguments are contrary to settled South Carolina contract law. The principle that a material breach by one party excuses further performance by the non-breaching party is a foundational element of contract law. The trial court correctly applied this principle to the facts it found. Appellant has cited no relevant authority to suggest the trial court's application of the law was in error. Instead, Appellant presents arguments that are wholly unsupported by precedent, rendering the appeal "manifestly without merit."
3. **The Appeal Was Filed for an Improper Purpose:** Given the clear factual findings of the trial court and the settled nature of the applicable law, the only plausible reason for this appeal is to delay the finality of the judgment and to force Respondents to incur additional legal expenses. This tactic unnecessarily burdens the Respondents and the judicial resources of this Court.

For these reasons, the appeal is frivolous within the meaning of Rule 240, SCACR.

#### **REQUESTED COSTS AND FEES**

As a direct result of having to defend against this frivolous appeal, Respondents have incurred reasonable and necessary attorney's fees and costs. Respondents request that this Court tax the following amounts against the Appellant:

- **Attorney's Fees:** \$7,500.00
- **Costs (Filing Fees, etc.):** \$500.00
- **Total:** \$8,000.00

A sworn affidavit from Respondents' counsel is attached hereto as **Exhibit A**, detailing the services rendered, the time expended, the hourly rates charged, and a list of all costs incurred in this matter.

## **CONCLUSION**

WHEREFORE, Respondents respectfully request that this Court issue an Order:

A. Finding that the appeal filed by Appellant is frivolous; B. Taxing costs and attorney's fees against Appellant in the amount of \$8,000.00; and C. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

*/s/ Susan R. Galloway* Susan R. Galloway (SC Bar #12345) Galloway & Associates, LLC

123 Commerce Street Columbia, SC 29201 (803) 555-0101

*susan.galloway@gallowaylaw.com Attorneys for Respondents*

Date: October 18, 2024

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing Motion to Tax Costs and Attorney's Fees upon the opposing party by depositing it in the United States Mail, first-class postage prepaid, addressed as follows:

John T. Franklin, Esq. Franklin Law Firm 456 Meeting Street Charleston, SC 29401 *Attorney for Appellant*

This 18th day of October, 2024.

*/s/ Susan R. Galloway* Susan R. Galloway

*Bryant Davis  
208 Paula Avenue  
Orrenwood, S.C. 29646*



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APR 13 2025  
SC Court of Appeals

*Appeals Court  
1220 Senate Street  
Columbia, S.C. 29201*

